[By Allan Ramsay]

AN

HISTORICAL ESSAY

ON THE

Engliſh Conſtitution:

OR,

An impartial Inquiry into the Elective Power of the People, from the firſt Eſtabliſhment of the Saxons in this Kingdom.

WHEREIN

The Right of Parliament, to Tax our diſtant Provinces, is explained, and juſtified, upon ſuch conſtitutional Principles as will afford an equal Security to the Coloniſts, as to their Brethren at Home.

Where annual Election ends, there Slavery begins.

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THE

PREFACE.

THE motive, which induces the Author to lay theſe papers before the public, is, an honeſt deſire to ſhow the true cauſe of that general diſcontent, which now diſtracts the Britiſh Empire; and, to point out the conſtitutional means of reconciliation, between Great Britain and her diſtant provinces.

The Author of this Eſſay apprehends, that the true cauſe of the preſent general diſcontent, hath its foundation in ſome modern laws, which, though they have preſerved the outward form and face of the legiſlative

authority, have cauſed a total change in the ſpirit, and temper of our government. Whilſt the people, from a ſimilar appearance have vainly expected a ſimilar effect, but find themſelves continually diſappointed, and their misfortunes increaſing with time.

To elucidate this matter, and to ſhew the public their deception, the Author hath carefully examined the foundation upon which the conſtitution was eſtabliſhed in England, by our Saxon forefathers; and remarked the variations, which have taken place, at, what is commonly called, the conqueſt, and ſince that period; but more eſpecially thoſe which have taken place ſince the REVOLUTION.

And though he doth not pretend, to elegance of ſtyle; he hopes he hath been able to deliver himſelf ſo clearly as to be intelligible. For the reſt, he depends upon the indulgence of the publick, to whoſe ſervice his labour is dedicated. If his obſervations ſhould be

be found erroneous, he moſt ſincerely wiſhes ſome more able pen may inform him better. But, if approved, ſhall think himſelf happy, in having contributed his mite, to ſet the laws and conſtitution of his country in a clear and proper light.

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AN

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HISTORICAL ESSAY

ON THE

Engliſh Conſtitution.

CHAPTER I.

Some remarks upon government adapted to the ſubject.

THE motives for which mankind aſſociate together, being for the protection of their perſons, and property from violence, it is a matter worthy of obſervation, that they have often miſtaken their end, and have frequently fallen into ſlavery, and miſery by the very means they have taken to preſerve themſelves happy and free. This perhaps may, in ſome meaſure, ariſe from ſome latent cauſe in the nature of government itſelf, which, in all ſocieties, neceſſarily implies a power to be veſted ſomewhere; and the difficul-

ty ſeems to be, in placing that power in ſuch a manner, that it may not be ſubject to abuſe, and counteract the end for which it was eſtabliſhed.

If the firſt principle of government be erroneous, there is nothing but error that can proceed from it. And if the firſt principle of government be even founded upon truth, yet ſuch is the inſatiable thirſt of power, in moſt men, that they will ſacrifice even heaven and earth, to wreſt it from its foundation; to eſtabliſh a power in themſelves, to tyrannize over the perſons and property of others. Thus, what we call, the civilized ſtate of man, has long been reduced to a far more miſerable condition, than the ſavage.

Thoſe communities of men, that have laid down the paternal authority as the firſt principle of government, that is, that the head of the oldeſt branch of a tribe, ſhould govern the tribe, have founded themſelves upon the principles of ſlavery; and have accordingly, in a few generations, fallen under the deſpotic rule of one man; as we find, many of the eaſtern nations have done, from the moſt early period of hiſtory. They had either no idea of any mode of government, by which individuals, might exerciſe their natural rights, as men, or they totally diſregarded it.

The free ſtates of Greece were the firſt, in antient hiſtory, that had any regard to the natural rights of mankind. Theſe founded, their firſt principles of government, upon truth; by placeing the ſupreme power of the ſtate, in laws made by the mutual conſent of the people; who likewiſe elected officers, to adminiſter thoſe laws for a limited time only. The Romans were the next body of men that figured, in the world, upon this principle; and, indeed, they received their information from the Greeks, whom they copied in moſt of their principles of law, and government.

But

But the northern nations, that over-ran Europe at the diſſolution of the Roman empire, introduced a model of government, for the preſervation of the common rights of mankind, as far ſuperior to the Greek and Roman commonwealths, as theſe ſurpaſſed the governments of the Medes, and Perſians. It was to ſome branches of thoſe northern tribes, diſtinguiſhed by the name of Saxons, that the Engliſh are indebted for their conſtitution, or mode of government; introduced into England, about the year four hundred and fifty. And whoever conſiders the principles upon which the elective power, in our conſtitution, is conducted, will obſerve the vaſt ſuperiority it has, over the ſtates of Greece, or Rome; where the elective power was confined, within the walls of their reſpective capitals. Whatever, therefore, the love of natural liberty, among the Romans, might be, or their deſire of promoting it; they ſeem to have had no conception of any model of government, where the elective power of individuals, could diffuſe itſelf through the whole body of a nation, containing ſome millions of men, living perhaps a thouſand miles diſtant, from the ſeat of government. And yet be ſo conducted, as to unite, into one point of action, parts ſo numerous, and remote, and form a legiſlative authority, commodiouſly fit for action, without anarchy or confuſion; in which every man, who had ſo far diſtinguiſhed himſelf, as to become a houſe-keeper, and as ſuch, liable to pay his ſhot, and bear his lot, might give his conſent to every law, that was made for his obedience.

Whoever had the honour of being the firſt inventers of this mode of government, it is very evident, that the natural rights of mankind were their guide, and truth and juſtice their ends, in all their eſtabliſhments. They conſidered every man alike, as he came from the hands of his Ma-

ker, man as man, ſimply and detached from any foreign advantages, one might, accidentally, have over another. Such as riches, which make the greateſt outward difference; but riches with them, conſtitutionally conſidered gave no power or authority, or any right to power and authority, over the pooreſt perſon in the ſtate. Every man, under that inſtitution, was preſerved in his natural, and equal rights, whether he were rich or poor.

It is the nature of ſociety, that mankind muſt give up ſomething of their natural liberty, to obtain the advantages of an united ſtrength. For as every man cannot act for himſelf, in large communities, he muſt delegate his power in truſt, to ſome other perſon to act for him. And therefore a government, formed upon the principles of a delegated power, is the utmoſt ſtretch of liberty, which the nature of ſociety can admit of. Where this power is delegated, by as many as can conveniently act without confuſion, or a large majority of the people, it will be fully effectual to all. For though a man place himſelf, or be placed under ſuch circumſtances, as to render it impoſſible for him to exerciſe his right of election, in the community to which he belongs, yet he may always receive the full benefit of a government founded upon the principles of election, as much as if he were an elector, ſo long as he is bound by no other law than thoſe are, who do exerciſe the power of election; becauſe they muſt of neceſſity take care of his intereſt, at the ſame time they take care of their own.

All government muſt, in its own nature, be confined to time and place. And where men are ſo circumſtanced, that they cannot fall in with time and place, they muſt receive, the benefit of the conſtitution, from thoſe who can. Were it otherwiſe, a ſociety, formed upon the common rights of mankind, could never advance beyond a certain

certain limited point; or form any advantageous plans, by the extenſion of territory, for the mutual benefit of the whole community; which would counteract the very end of ſociety itſelf. But our conſtitution, by admitting ſuch a number of electors, to exerciſe their natural rights of election, gives it a ſuperiority to all others; and affords a plentiful ſecurity to every man, let him be placed where, and in what condition ſoever he may. Thus our Saxon forefathers, have founded their government, upon the common rights of mankind. They made the elective power of the people, the firſt principle of our conſtitution, and delegated that power to ſuch men, as they had moſt reaſon to confide in. However, they were curiouſly cautious in this reſpect, knowing well the degenerating principles of mankind; that power makes a vaſt difference in the temper and behaviour of men, and often converts a good man in private life, to a tyrant in office. For this reaſon, they never gave up their natural liberty, or delegated their power, of making laws, to any man, for a longer time than one year.

The object upon which our elective power acts, is remarkably different from that of the Romans. Theirs was directed to operate in the election of their chief officers, and particularly the conſuls; or thoſe who were veſted with the executive authority, whom they changed annually. But the ſenate, where the principal power in their ſtate was lodged, was a more fixed body of men; and not ſubject to the elective power of the people.

Our Saxon forefathers almoſt reverſed this principle; for they made their wittena-gemot, or parliament, where their principal power was lodged, annually moveable, and entirely ſubject to the elective power of the pepole; and gave a more fixed ſtate, to the executive authority. This laſt, they

confined within a certain ſphere of action, preſcribed by the law; ſo that it could not operate to the injury of any individual, either in his perſon, or property; and was controllable in all acts of ſtate, by the elective power, which the people veſted annually in their wittena-gemot, or parliament.

The annual exerciſe of elective power, under the Saxon government, was the quinteſſence, the life and ſoul of their conſtitution; and the baſis of the whole fabrick of their government, from the internal police of the minuteſt part of the country, to the adminiſtration of the government of the whole kingdom. This Saxon inſtitution, formed a perfect model of government; where the natural rights of mankind were preſerved, in their full exerciſe, pure and perfect, as far as the nature of ſociety will admit of.

It would be ſomething ſurprizing, to find the people of England continually diſputing, about the principles, and powers, veſted in the conſtituent parts of their government; did we not know that, at this day, it conſiſts of a mixture of the old, or firſt eſtabliſhment, and the new, or that which took place at (and ſince) what is commonly called the conqueſt, by William the firſt. Theſe two forms of government, the firſt founded upon the principles of liberty, and the latter upon the principles of ſlavery, being ſo diametrically oppoſite, it is no wonder that they are continually at war, one with the other. For the firſt is grounded upon the natural rights of mankind, in the conſtant annual exerciſe of their elective power, and the latter upon the deſpotick rule of one man. Hence our diſputants drawing their arguments from two principles widely different, it is no wonder they ſhould differ in their concluſions.

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Our Saxon forefathers, eſtabliſhed their government, in Britain, before the tranſactions of mankind were recorded in writing; at leaſt, among the northern nations. They, therefore, handed down to poſterity, the principles of their government, by the actual exerciſe of their rights; which became the ancient uſage, and cuſtom of the people, and the law of the land. And hence it came to paſs, that when this ancient cuſtom and uſage ceaſed to act, the remembrance of the cuſtom ceaſed with it. We may add to this, that, ſince the conqueſt, our arbitrary kings, and men of arbitrary principles, have endeavoured to deſtroy the few remaining records, and hiſtorical facts, that might keep in remembrance a form of government ſo kind, friendly, and hoſpitable, to the human ſpecies. It is for theſe reaſons, that we have ſuch a ſcarcity of hiſtorical evidence, concerning the principles, and manner of conducting, the firſt eſtabliſhment of our mode of government, in this kingdom.

However, notwithſtanding theſe difficulties, and the time that hath elapſed, there are four ſources, from whence we may draw this intelligence. Firſt, from the great remains of it we have, in our government, now in uſe; ſecondly, from the ſeveral Saxon eſtabliſhments that are ſtill in being, but of no uſe, with reſpect to the end of their firſt eſtabliſhment; thirdly, from the glimmering lights of ancient hiſtory; and laſtly, from the known alterations that have taken place, at, and ſince the conqueſt. There are alſo many cuſtoms, forms, principles, and doctrines, that have been handed down to us by tradition; which will ſerve as ſo many land-marks, to guide our ſteps to the foundation of this ancient ſtructure, which is only buried under the rubbiſh collected by time, and new eſtabliſhments. Whatever is of Saxon eſtabliſhment, is

truly conſtitutional; but whatever is Norman, is heterogeneous to it, and partakes of a tyrannical ſpirit.

From theſe ſources it is, that I would endeavour to draw the out-lines of this ancient model of government, eſtabliſhed in this kingdom, by our Saxon forefathers; where it continued to grow, and flouriſh, for ſix hundred years; till it was overwhelmed, and deſtroyed, by William the firſt, commonly called the conqueror, and lay buried under a load of tyranny, for one hundred and forty-ty-ſeven years. When again it roſe, like a phœnix from its own aſhes, in the reign of Henry the third, by the aſſiſtance of many concurrent cauſes; but principally by the bravery of the Engliſh people, under the conduct and intrepidity of our ancient and immortal barons, who reſtored it, in part, once more to this iſle. And though much impaired, maimed, and disfigured, it hath ſtood the admiration of many ages; and ſtill remains the moſt noble, and ancient monument of Gothic antiquity.

CHAPTER II.

The firſt eſtabliſhment of our conſtitution, by the Saxons, to what is commonly called the Norman conqueſt.

SECT. I.

Under the Heptarchy.

THE firſt principle of a government, that is founded upon the natural rights of mankind, is the principle of annual election. Liberty and election, in this caſe, are ſynonimous terms; for where there is no election, there can be no liberty. And

And therefore, the preſervation of this elective power, in its full extent; is the preſervation of liberty in its full extent; and where that is reſtrained, in any degree, liberty is reſtrained juſt in proportion; and where that is deſtroyed, by any power in a ſtate, whether military, or civil, liberty is alſo deſtroyed by that power, whether it be lodged in the hands of one man, one hundred, or one thouſand.

I have ſaid, that there is a natural difficulty in placing mankind in ſuch a ſituation, that they might delegate their power to others, without confuſion or inconvenience to themſelves. It is in this point, that we are ſo much indebted, to our Saxon forefathers, for their plan of government; by which the people of England are ſo ſituated, as to be able to elect, or delegate their power, with the greateſt facility; and to a degree beyond the conception of all nations before them.

It is reported, by hiſtorians, that our Saxon forefathers had no kings in their own country, but lived in tribes, or ſmall communities, governed by laws of their own making, and magiſtrates of their own electing; and further, that a number of theſe communities were united together for their mutual defence and protection. But by what particular bond of union they were thus united, I know of no hiſtorian that hath given us any information. There were ſeven tribes of Saxons that arrived, in Britain, about the ſame time, under ſo many different leaders; but as they had all the ſame intentions, ſo far as to eſtabliſh the ſame form of government, I ſhall conſider them, in this reſpect, indiſcriminately.

They firſt divided the land into ſmall parts, and that divided the inhabitants, upon that land; and made them a diſtinct and ſeparate people from any other. This diviſion they called a tithing. Here they eſtabliſhed a government, which was, no doubt,

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the ſame as that under which they lived, in their mother-country; and, with as little doubt, we may ſay, it was the ſame which is uſed in our corporations at this day; as will, hereafter, more fully appear. They had two ſorts of tithings, one called a town-tithing, and the other a rural tithing. Theſe were governed upon the ſame principles, only thus diſtinguiſhed; as one is expreſſive of a town, having ſuch a number of inhabitants, as to make a tithing of itſelf; and the other of a tithing ſituated in the rural part of the kingdom. Thus they went on, as they conquered the country, to divide the land, till they had cut out the whole kingdom into tithings; and eſtabliſhed the ſame form of government in each.

In this manner they provided for the internal police of the whole country, which they veſted in the inhabitants of the reſpective tithings; who annually elected the magiſtrates that were to adminiſter juſtice to them, agreeable to the laws and cuſtoms they had brought with them from their mother-country. And this internal police was ſo excellent in its nature, that it hath had the encomiums of moſt authors of our hiſtory; who obſerve, that in the reign of Alfred, it was in ſo great perfection, that if a golden bracelet had been expoſed upon the high road, no man durſt have touched it.

The principal officer of a tithing, was veſted with the executive authority of the tithing. They had likewiſe a legiſlative authority in every tithing; which made laws and regulations for the good government of the tithing. Beſides theſe, they had a court of law, whoſe juriſdiction was confined within the ſame limits. All which were created by the elective power of the people, who were reſident inhabitants of the tithing; and the right of election was placed in every man that paid his ſhot and bore his lot. From hence we may eaſily perceive, that,

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under the eſtabliſhment of theſe tithings, by reaſon of their ſmallneſs, the natural rights of mankind might very well be preſerved in the fulleſt extent; as they could delegate their power by election, without any confuſion, or inconvenience to the inhabitants.

Having advanced thus far, I would make one obſervation; which is, that all elective power in the people at large, after it had eſtabliſhed the executive, and legiſlative authority, in the tithing, for one year, and duly veſted the officers in their reſpective departments, then ſtopped; and proceeded no further than the tithings. But the principal officer of each tithing (whom for diſtinction's ſake we ſhall call mayor) had, afterwards, the whole care of the intereſt of the people of the tithing veſted in himſelf alone, in every matter that reſpected their connexion, with the higher orders of the ſtate. For theſe tithings were the root from whence all authority, in the higher orders of the ſtate, ſprung.

The firſt connexion the tithings had with one another, was to form an eſtabliſhment, for the military defence of the country. For this end, a number of theſe tithings were united together, ſo far as related to their military concerns. This union neceſſarily created a larger diviſion of the land, equal to the number of tithings that were thus united, and this they called a wapentake, or weapontake. Here likewiſe they eſtabliſhed a court of council, and a court of law, which laſt was called a wapentake-court. In the court of council, the chief magiſtrates, of every tithing, aſſembled to elect the officers of the militia, to their reſpective command, and regulate all matters relating to the militia; in which every individual tithing was concerned. The court of law was to enforce

enforce theſe regulations within that juriſdiction.

Let us now conſider the third, and laſt diviſion, which they made in the land. This was compoſed of a certain number of wapentakes, united together; which they called a ſhire, or one complete ſhare, or part, into which they divided the land. This diviſion completed their ſyſtem of internal police; by uniting all the tithings, within the ſhire, into one body, ſubject to ſuch laws and regulations as ſhould be made in their ſhire-gemots, or ſhire parliaments; for the benefit, and good government of the ſhire.

The members that compoſed the ſhire-gemot, were ſtill the chief officers of the tithings; who always repreſented the tithings, in every thing in which they were concerned. It was in this ſhire-gemot, where the great officers of the ſhire, were elected to their office; who, conſequently, were elected by the immediate repreſentatives of the people, but not by the people at large. This ſeems to ſatisfy what hiſtorians obſerve, that the great officers of the ſhires were elected by their peers. What I underſtand by this, is, that they were elected by men, who were members of the wittena-gemot, or parliament; and conſequently peers, or equals, at that day, to any men in England. There were many titles, that ſeem to have belonged to their ſuperior orders of men; but they were only titles of office, and not perſonal titles of honour. And we ſhall, hereafter, have occaſion to obſerve, that, when the office, by which they held their titles, was aboliſhed, from that time the title vaniſhed with it.

As this diviſion comprehended many tithings, and many people, ſo it had the greateſt court of council in England, except the high court of parliament; and the chief officer was veſted with

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as high a juriſdiction in the ſhire, as the king in the kingdom. He was veſted with the executive authority, and was commander in chief of all the militia; in ſhort, he was the ſame in the ſhire, as the king was in the kingdom. They had likewiſe a court of law, called the ſhire-court; to which, I make no doubt, every man might appeal, who thought himſelf injured by the inferior courts in the ſhire. Theſe diviſions in the land are what I call the ſkeleton of the conſtitution, which was animated and put in motion by all theſe eſtabliſhments.

We may conſider each ſhire as a complete government; furniſhed with both a civil and a military power, within its own juriſdiction. The expence attending each government of a ſhire was merely local, and confined to the ſhire; which was ſupported by taxes charged upon the people, by the ſhire-gemot, with the aſſiſtance of certain lands, appropriated to that purpoſe; which was a clear and diſtinct thing from a national expence, and never brought to the national account at all. And, indeed, it is the ſame at this day, though conducted in a different manner; for the internal government of this kingdom is no expence to the ſtate, and is founded upon this equitable principle, that whatever expence concerns only a part, ought to be paid by that part only; but what concerns the whole community, ought to be paid by the whole community. I would here juſt beg leave to obſerve, that the government eſtabliſhed for the internal police of our American provinces, is founded upon the ſame principles as that which our Saxon forefathers eſtabliſhed, for the government of a ſhire. And their connexion with, and duty to the legiſlative authority, of the whole united kingdom, is, conſtitutionally conſidered, the ſame in each.

We have already remarked, that ſeven tribes of theſe Saxons arrived in Britain about the ſame time.

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The leaders of theſe tribes, after they had conquered a ſmall part of the country, upon which they ſettled their immediate followers, then took upon themſelves the title of king; and named, the land they conquered a kingdom. We ſhall ſay nothing with regard to the particular geographical dimenſions of theſe kingdoms; it being ſufficient, for our preſent purpoſe, to obſerve, that each of theſe kingdoms did contain a certain number of ſhires, formed and regulated as we have ſtated above.

Let us now ſee by what mode of union theſe ſhires became united together into a kingdom. And it will be found, I apprehend, that they purſued the ſame principles which they had uſed in every other eſtabliſhment. That is to ſay, wherever a combined intereſt was concerned, and the people at large were affected by it, the immediate deputies of the people, who were always the chief officers of the tithings for the time being, met together to attend to the reſpective intereſts of their conſtituents; and a majority of voices always bound the whole, and determined for any meaſure that was ſuppoſed to operate for the good of the whole combined body. This meeting of the deputies of the people was called, by the Saxons, the wittena-gemot, or an aſſembly of the wiſe men of the nation; which compoſed their national council and legiſlative authority.

Let us ſuppoſe, for inſtance, that one of theſe ſmall kingdoms was compoſed of five ſhires; then a deputy from every tithing, within the five ſhires, meeting together, would compoſe the conſtituent parts of the parliament, of the little kingdom to which they belonged. This agrees with what Saint Ammon ſays, in his eſſay on the legiſlative authority of England, that the judges, or chief officers of the tithings, repreſented the tithings in the Saxon wittena-gemot, or parliament.

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We know very well what town-tithings or boroughs are, becauſe they are now in uſe, in ſome reſpects, for the ſame purpoſe as formerly; but we are not ſo well acquainted with the dimenſions of the rural tithings, according to their ancient eſtabliſhment. But it is very probable, that the diviſion in the land, which we now call the high conſtable's diviſion, was the bounds of the ancient rural tithings. And what makes this the more probable is, that the high conſtable in his diviſion is a man of a very high authority even at this day, and as ancient a peace officer as any in the kingdom. However, be that as it will, from what has been ſaid we may conclude, that the conſtituent parts of the legiſlative authority, during the Heptarchy, conſiſted of two bodies of men, which were both elective; and reſpectively repreſented the inhabitants of the towns, and the inhabitants of the rural parts of the kingdom.

But as a conſiderable alteration was made, in this reſpect, at the union of the ſeven kingdoms into one, by Alfred the great, it will be proper here to remark the conſtituent parts of the parliaments, and the rights of election of the people, during the Heptarchy. Firſt, the repreſentatives of the town-tithings, or boroughs, were always their chief magiſtrates for the time being, by virtue of their office; to which they were annually elected, by every man that was a reſident inhabitant of the town, and that paid his ſhot and bore his lot.

Secondly, the repreſentatives of the rural tithings were likewiſe their chief magiſtrates, for the time being, by virtue of their office; to which they were annually elected, by every man that was a reſident inhabitant of a rural tithing, and that paid his ſhot and bore his lot.

Hence it is evident, that the people never delegated their power to their members of parliament,

for

for a longer time than one year. Becauſe the powers, veſted in them, muſt of courſe expire with their office; they being mayors or chief magiſtrates in their reſpective diviſions. And before ſuch a member was out of his office, as mayor, he was obliged by law *(ex officio)* to aſſemble the people of the town, for the election of officers, to ſerve for the enſuing year; the principal of whom was their mayor-elect, who, conſequently, was their member elect. And, for the ſame reaſon, it was not in the power of the king to continue the ſame parliament longer than one year. Thus we ſee that the conſtitution hath doubly armed itſelf againſt long parliaments, by confining the power of the members within the the duty of an annual office.

SECT. II.

Under the Monarchy.

I HAVE already remarked that a number of the Saxon tribes, while in their own country, were united together for their mutual protection and defence. In like manner was our Heptarchy connected; and their mode of union became part of the conſtitution, when the ſeven kingdoms united under one king. The matter was ſimply this: one of the ſeven kings was always choſen generaliſſimo over the whole body; and they appointed him a ſtanding council, of a certain number of deputies, from each ſtate, without whoſe advice and concurrence it is probable he could not act.

However, I do not mean to make any obſervation, upon the powers veſted in this ſtanding council; but only to point out that body of men, as the origin of our houſe of lords. Thoſe deputies, who compoſed this great ſtanding council, were appointed

ed to their truſt, by the joint conſent of the king, and parliament, of the little kingdom from whence they were ſent. And when Alfred the great united the ſeven kingdoms into one, he, undoubtedly, with the approbation of the people, incorporated this great council, as a ſeparate branch of the wittenagemot, or parliament; ſo that they ſtill continued to be the king's great council, and a branch of the legiſlative authority; which they are at this day, In confirmation of which, it is obſervable that the conſent of the parliament continued neceſſary for creating a baron of the realm, about as low down as Henry the ſeventh; which is the only title by which any man can obtain his ſeat in our houſe of lords; and not as duke, marquis, earl, viſcount, &c.

From whence it appears, that the ſame authority, that is, the conſent of the king and parliament, continued as neceſſary for the creation of a lord of parliament, as for creating one of the great council to the generaliſſimo of our Saxon kings, during the Heptarchy. And in all probability it will, ſome time or other, be a doubt, whether the king's patent alone will be ſelf-ſufficient to create a baron of the realm, without the conſent of parliament; agreeably to the original inſtitution, and confirmed by the cuſtom and uſage of ſo many ages.

The Saxons had no ſooner made a conqueſt of England from the Britons, than they began to quarrel amongſt themſelves which of the ſeven kingdoms ſhould be the greateſt. This conteſt was carried on, with various ſucceſs, for a number of years, till at laſt they became happily and finally united into one, under Alfred the great; a prince of the moſt exalted merit that ever graced the Engliſh throne, from that day to this.

He was a great warrior, an able ſtateſman, and a perſon of great learning; he knew and loved the conſtitution of his country; and above all, was an

honeſt man, and the common friend to mankind. It was a ſingular providence to this kingdom, that the new modelling of the government ſhould fall under the management of ſo great a genius; that was able to reconcile ſuch a variety of intereſts, as muſt be affected by the neceſſary changes which took place upon that occaſion.

It is needleſs to mention that, after the union of the ſeven kingdoms, a reduction of members to ſerve in parliament became abſolutely neceſſary. Becauſe it was then impracticable, by reaſon of their numbers, for the ſame members to attend, in one parliament, that uſed to attend in ſeven, without ſuch anarchy and confuſion as muſt counter-act the very end of their meeting.

Nature herſelf has confined or limited the number of men, in all ſocieties, that meet together to inform and be informed, by argument and debate, within the natural powers of hearing and ſpeech. So that the queſtion, in this caſe, muſt have been, how to reduce the repreſentatives of the people, in parliament, to be a convenient number, to tranſact the buſineſs of the nation; and, at the ſame time, preſerve the elective power of the people unhurt? A queſtion of no ſmall difficulty to determine, conſidering the various intereſts that were affected by it.

Let us now proceed to the formation of one parliament, which was now to be eſtabliſhed in the room of ſeven, for the ſervice of the whole united kingdom.

They excluded from this parliament all the repreſentatives of the rural tithings, as being a body of men the moſt numerous of any, conſidered collectively, and yet elected by the feweſt people, in proportion; which muſt be very evident, ſince the rural part of the kingdom muſt of courſe be more thinly inhabited than the towns. Beſides, the town-

tithings,

tithings, or boroughs, where a great number of inhabitants are collected together upon a ſmall compaſs of ground, were, undoubtedly, the moſt conveniently ſituated, for the commodious exerciſe of the elective power of the people. And the towns being few, in compariſon to the rural tithings, and at the ſame time diſperſed over the whole country, were the beſt adapted to receive the regulations they intended to make, in their plan of forming the conſtituent parts of the new parliament.

In ſatisfaction for aboliſhing the repreſentatives of the rural tithings, they ſubſtituted two new bodies of men. The firſt, as hath been hinted before, were the members of the great council of the nation, which attended the generaliſſimo under the Heptarchy; who were, upon this occaſion, incorporated as a diſtinct branch of the parliament under the monarchy. And whatever their power might be, as the king's great council, they were now incorporated as a diſtinct branch of our parliament; as a body of great freeholders, exerciſing their legiſlative power in perſon; and for that reaſon have ſince, by way of eminence, being ſtiled barons of the realm. It is upon this ground, that our houſe of commons are of opinion, that a lord of parliament hath no right to interfere in matters of election.

Though the barons of the realm carried into parliament the greateſt concern for the intereſt of the rural part of the kingdom, of which perhaps they were the greateſt proprietors; yet, not being elective, they were not ſuch a body of men, as the conſtitution, and the ſafety of the inhabitants of the rural tithings required. And, therefore, they conſtituted ſhire-elections, for two members to repreſent the ſhire in parliament; and thoſe repreſentatives were the origin of our knights of the ſhire.

The barons of the realm, and the knights of the ſhires, I conſider as two bodies of men that were ſubſtituted, at the eſtabliſhment of the monarchy, under Alfred the great, in the place of thoſe repreſentatives that uſed to ſerve, under the Heptarchy, for the rural tithings. The alteration that was made, with reſpect to the towns or boroughs, was ſimply this: that all boroughs that uſed to ſend one member to the little parliament, to which they belonged under the Heptarchy, ſhould, for the future, ſend two to the great parliament of England.

Thus the ſeven kingdoms of the Heptarchy became finally united under one king, or chief magiſtrate, and one parliament. By which means the members were properly reduced to a convenient number to hear, and to be heard, to inform, and to be informed, by argument and debate; which is no ſmall difficulty, in a government founded upon the common rights of mankind; where the elective power of the people is diffuſed through a whole kingdom, like that of England.

We will now conclude this part of our ſubject, by enumerating the conſtituent parts of the parliament, as it was thus new modelled, under the inſpection of Alfred the great:

Firſt, it conſiſted of the barons of the realm; created by the mutual conſent of the king and parliament.

Secondly, of the knights of the ſhires; elected by the rural inhabitants of the ſhires, paying their ſhot, and bearing their lot.

Thirdly, of the burgeſſes; who repreſented the people of the towns; and were elected by every reſident inhabitant, that paid his ſhot, and bore his lot.

I have thus endeavoured to give the hiſtory of the mode of government, introduced into this kingdom by our Saxon forefathers, about the year 450, to the

the union of the ſeven kingdoms into one; when the conſtitution of this country became finally eſtabliſhed, as a great nation. And whoever attentively conſiders this matter will ſee, that our Saxon forefathers had only one mode of government, which they made uſe of on all occaſions; both to govern a town, a city, a wapentake, a ſhire, or a kingdom. And that the power, veſted in our Saxon kings, was circumſcribed by the ſame rule, was of the ſame genius, ſpirit, and temper, as that veſted in the chief magiſtrate of a city. The only difference between them, was in the circle and duration of their authority; the care of the one being annual, and confined within the walls of his city; and the care of the other being for life, and extended over the whole kingdom.

There were three things eſſentially neceſſary to form a Saxon government, which they applied to every caſe, where a combined intereſt was concerned; and theſe were, a court of council, a court of law, and a chief magiſtrate. A court of council, to conſider what was for the benefit of the whole ſociety; and to make laws, orders, and regulations for the good government of the people within that juriſdiction. A court of law, to enforce due obedience to the acts, and orders of the court of council. One chief magiſtrate, who was veſted with the executive authority to adminiſter the conſtitution to the people; and whoſe duty it was to take care that every man, within his juriſdiction, paid a due obedience to the law.

In this manner every borough was furniſhed with a court of council, a court of law, and a chief magiſtrate. Every wapentake and rural tithing had the ſame. Every ſhire had likewiſe a court of council, called the ſhire-gemot, and a court of law, called the ſhire-court, and a chief magiſtrate. The ſame eſtabliſhment held good, in the adminiſtra-

tion of the government of the whole kingdom: for the court of council was the high court of parliament; the king's court was the court of law; and the king himſelf was the chief magiſtrate.

As it was impoſſible for the chief magiſtrate, in great towns, to execute the buſineſs, without encroaching too much upon his time; and hindering his attendance upon the higher orders of the ſtate, where his preſence was more particularly neceſſary; they elected a number of men, whoſe buſineſs was to aſſiſt the chief magiſtrate, in the execution of his duty at home. The principal of theſe were what we now call the aldermen of a town; and there were, beſides, many other inferior officers

The firſt duty that the chief magiſtrates of the tithings had out of their own diviſion, was to attend at the wapentake-meeting; where they formed the wapentake-court of council. Their ſecond duty was to attend at the ſhire-gemots, where they again formed the court of council. And laſtly, they attended in the wittena-gemot, where they formed the common council in the high court of parliament.

It is very evident from hiſtory, and I think it is generally agreed, that our Saxon kings, after their eſtabliſhment in England, enjoyed the crown during their natural lives; and that, at their death, their ſucceſſor was elected to his office by the parliament. However, they generally gave the preference to ſome one of the ſame family; who was capable of executing his office in perſon. For our Saxon forefathers had no principle in their mode of government, by which power or office could be obtained peaceably, by any other means, than by receiving it from ſome body of men who had a right to give it.

Were an old Saxon to riſe out of his grave, and be told that there was an hereditary right to power in

in kings; and that England was ſometimes governed by a child; he would be greatly ſurpriſed, and tell you it was the oddeſt conception that ever entered the mind of man. And yet, as things are now ſituated, wiſe men are of opinion that chance, in this caſe, is better than chooſing.

This Saxon model of government, when reduced to its firſt principles, has a ſtrong reſemblance to the natural ſtate of things, under which mankind were found to live, at the diſcovery of the new world, by Columbus. And I make no doubt, but that our American tribes of native Indians would naturally fall into our way of government, upon the Saxon principles, with a very little inſtruction.

However, be that as it may, it was a government founded upon the principles of univerſal benevolence. And though I would not be thought to talk like a conſtitutional enthuſiaſt, yet I am of opinion, that if ever God Almighty did concern himſelf about forming a government, for mankind to live happily under, it was that which was eſtabliſhed in England by our Saxon forefathers; under which they continued to live free and happy for ſix hundred years before the Norman conqueſt; when, for a time, it was totally loſt, or little regarded.

If we were to ſelect the attributes of good government, we ſhould find them them to conſiſt in wiſdom and juſtice. And if we could divide thoſe virtues from all bad qualities in men, and place ſuch men, and ſuch only, to rule over us, we ſhould eſtabliſh an heaven upon earth. The power of election which our government hath diffuſed through the whole nation, will always produce this happy effect, when it is left to operate upon its genuine principles. For, by dividing the country into ſmall parts, as our tithings were, the character of every man, that was fit to bear an office, was well known amongſt his neighbours. And, therefore,

when the choice of an officer to preſide over them, was their object of election, the concurrent ſentiments of an uninfluenced majority, of a multitude of people, would naturally fall upon thoſe men only, who were moſt eminent for their wiſdom and juſtice.

Thus our Saxon forefathers bade the faireſt of any men, to obtain a government formed upon the principles of wiſdom. And their high ſenſe upon this matter is moſt emphatically expreſſed, by the name they gave to their parliament, which, as hath been ſaid, they called THE WITTENA-GEMOT, or an aſſembly of wiſe men.

CHAPTER III.

The deſtruction of the Saxon mode of government, by a combination of the clergy with William the baſtard, duke of Normandy.

SECT. I.

The ground upon which the clergy firſt eſtabliſhed their religious tyranny.

BEFORE I proceed to obſerve the deſtruction that was made in the conſtitution, or mode of government, by the fatal union of the church with William of Normandy, I muſt not forget to take notice, that I have not given the clergy a place in the Saxon parliaments; becauſe they were foreign to the original inſtitution, and only grafted themſelves upon it, after it was eſtabliſhed in England. But as they afterwards obtained ſo conſiderable a ſhare, both in the legiſlative authority and the adminiſtration

miniſtration of the government, it may not be amiſs to give ſome account how they came by it.

The Roman pontiff had already extended his plan of church-power to a great degree; and the nature of the government introduced into Europe, by the northern nations, greatly contributed to his ſucceſs. All hiſtory is full of the dreadful conſequences that have attended the baneful influence, which every religious hierarchy hath always had upon the bulk of mankind. And, a government, founded upon the elective power of the people, where their favour was the high road to riches, power, and grandeur, gave a fine opportunity to ſuch an artful, deſigning ſet of men, by their intrigues and influence, to procure themſelves or their devotees to be elected into the chief magiſtracy of the towns and country diviſions. By this means they poſſeſſed themſelves, in a great meaſure, of the legiſlative authority; and conſequently became, in proportion, maſters of the ſtate. For whoever is maſter of the legiſlative authority in any ſtate, is undoubtedly maſter of that ſtate.

Having thus taken poſſeſſion as it were of the manſion, they were not long before they began to plunder it. However, they firſt eſtabliſhed and ſecured the power of the church, by a variety of laws made in her favour; and defended them by every eccleſiaſtical eſtabliſhment that papal cunning could invent. So that they were now prepared to receive, in the name of the church, all the riches, honours, and power, which they could, by any means, obtain. And what is more, they knew too how to keep them when they had obtained them. For, according to their maxim, whatever was given to the church, was given to God; and, therefore, was never afterwards ſubject to be taken away, by any earthly power whatever.

Thus

Thus they endeavoured to provide againſt all revolutions in the ſtate, that the property of the clergy might always be ſafe under the name of the church. Upon this ground, the clergy have grafted themſelves upon every ſtate in Europe. And as they are plants that will grow in any ſoil they have taken ſuch deep root, that ſcarce any ſtate, except Holland, hath been ſo unfriendly to their vegetation, as to exclude them from having ſome ſhare in government; though they have no more buſineſs with ours, as a ſeparate body of men, than the company of apothecaries, or pariſh clerks.

It is ſurpriſing that mankind ſhould ever be ſo inconſiderate, as to ſuffer any religious order of men to form an independent intereſt in the ſtate, which muſt, from the engroſſing principles upon which it is founded, be evidently deſtructive to the ſociety to which it belongs. For while the church was continually acquiring riches and power, and never diſcharging either, it muſt follow, that the clergy would, in a ſhort time, be the richeſt and moſt powerful body of men in any ſtate, where they were thus eſtabliſhed. Such was the ſituation of this kingdom at the death of Edward the confeſſor; when England may be ſaid to be governed by the power and influence of the clergy. And we ſhall ſee preſently how theſe ſhepherds betrayed their flocks, and ſurrendered them to the Norman tyranny.

Under all tyranny, whether of kings or prieſts, or both, it is the people, who are to be made the ſacrifice; it is the people, who are to be plundered of their property; it is the people, who are to wear the yoke of ſlavery; it is they, who are to be made hewers of wood and drawers of water. But ſo long as the Engliſh government continued upon the original principles upon which it was founded; and the people annually exerciſed their elective power; ſo long it was out of the power either of the king,

or

or the clergy, to commit any acts of violence with impunity.

Indeed the clergy might recommend, and the people might content to many things that were wrong, and even ruinous in their consequences; yet the latter had always, in their own hand, a correcting remedy for all their errors. It was this correcting power in the people that hung like a millstone over the pride and riches of the clergy; and made them apprehensive that, at some time or other, it would crush them to pieces; and put an end to all their schemes of authority, riches and grandeur.

The parliament, in the reign of Edward the confessor, had given such a specimen of their correcting power, as was enough to shake the foundation of the papal chair; and that was by banishing Robert, archbishop of Canterbury, as an incendiary, and fomenter of divisions between the king and his subjects; and appointing one Stigand archbishop in his room. By this they saw, there was only one way to avoid the danger, and preserve and extend their tyranny over the people; and that was, to destroy the elective power, and establish an arbitrary government in the state. This they were so bold as to attempt, and so happy as to see effected, by William the bastard, duke of Normandy; who, in the year one thousand and sixty-six, put an end to the Saxon mode of government, which had subsisted for six hundred years, from its first establishment; the particulars of which transaction we shall enumerate in the following section.

SECT.

SECT. II.

What is commonly called the conqueſt, by William the firſt.

WE are now come to that period of the Engliſh hiſtory, which contaminated the purity of the Engliſh conſtitution, or mode of governmeht, with a deſpotic ſpirit; which time has not been able, totally, to eradicate.

After the death of Edward the confeſſor, there were two candidates for the crown of England, which always had been elective, and continued ſo to this laſt Saxon king. The one was Harold, an Engliſhman of great natural abilities, much merit, and vaſtly beloved by the people; who had been elected chief magiſtrate of three ſhires, (Kent, Suſſex and Surrey) at the death of his father earl Goodwin; who, before him, had held the ſame offices.

The other was William the baſtard, duke of Normandy, who was a man of a warlike genius, and a very powerful prince; whoſe dominions being ſituated oppoſite to our coaſt, rendered it more convenient for him, than for any other prince, to tranſport an army into England, and conſequently to enſlave the nation. For which reaſon, no one, who was a friend to his country, would ever think of electing a man who would be ſo notoriouſly dangerous to its laws, liberty, and conſtitution.

Indeed the dangerous conſequence of his election was ſo apparent, that, though the clergy had marked William for their man, yet they could not hinder the choice of Harold, and therefore he was elected king of England, by the wittena-gemot or parliament; and was accordingly crowned the next day, by the archbiſhop of York.

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The pope and William, finding themſelves fruſtrated in all their previous intrigues and ſecret cabals, in obtaining the crown of England for the latter, were reſolved to attempt it by open force; but the ſtates of Normandy having refuſed the duke an aid of money for the undertaking, he was obliged to have recourſe to ſome other means for aſſiſtance. The pope, therefore, was now obliged to pull off the maſk, and declare openly againſt England, and make a cruſading buſineſs of it; which was done with a view to encourage individuals to engage in the enterprize. And that all men might more plainly ſee that William was the champion of the church, he firſt made the duke a preſent of a conſecrated ſtandard, with a golden *agnus dei*, and one of ſaint Peter's hairs; and then ſolemnly excommunicated every man that ſhould oppoſe him.

The duke, on his part, offered the lands of England as a prize to be fought for, and to be divided amongſt all thoſe that ſhould aſſiſt him in the conqueſt; by which means he engaged, not only great numbers of his own ſubjects, but many of his neighbours, to aſſiſt him. Thus the duke of Normandy was enabled to fit out a fleet and army, with which he invaded England; and, on the 14th of October 1066, was fought the ever-memorable battle of Haſtings, in which the Engliſh army was routed, and king Harold ſlain; which flung the whole nation into confuſion, and ſoon after procured the crown of England to William.

Morcar and Edwin, two brave officers who diſtinguiſhed themſelves all that day in battle, retired in the night, with the broken remains of the army, to London; in hopes to recover the people from their fright and conſternation, and to apply ſome remedy to ſo preſſing an evil. Hiſtorians obſerve, that, in all probability, they would have ſucceeded, if the treacherous behaviour of the clergy,

clergy, in London, had not broken all their measures, by ſecretly caballing amongſt the people. Theſe two officers, and ſome others who were zealous friends to the liberty of their country, aſſembled the people; and repreſented to them, that the firſt thing to be done, was to come out of that ſtate of anarchy, and confuſion they were in, and immediately to elect ſome perſon to the chief command. That Edgar Atheling was upon the ſpot, and one of the family of their ancient kings; and that no man could have any juſt objection, againſt his advancement to the throne. That as ſoon as he ſhould be proclaimed king, he would ſend orders, to all parts of the kingdom, to levy troops; and that the duke of Normandy ſhould ſoon find, to his coſt, that the gaining a ſingle battle was not ſufficient to render him maſter of the kingdom. And to ſpirit up the people the more to action, they put them in mind how they had defended their country, inch by inch, againſt the Danes, for a great many years; and had, at laſt, drove them out of the kingdom; and that there was no doubt but they would ſoon do the ſame by this new invader.

The clergy, knew this was the critical moment, and that if they could but keep things in confuſion a little longer, their buſineſs was done, and therefore they openly oppoſed every propoſal of reſiſtance. The declaration of the Pope, in favour of William, was ſufficient to induce all the clergy, then in London, with the two archbiſhops at their head, to cabal amongſt the people, in order to hinder Edgar's election; which they ſo effectually did, that Morcar and Edwin, ſeeing every propoſal overruled, and deſpairing of ſucceſs, retired into the north to take their own meaſures.

They were no ſooner gone, than the archbiſhop of Canterbury, the archbiſhop of York, the biſhop of Wincheſter, and the clergy about London, and

and, ſome ſay, prince Edgar himſelf (by their perſuaſion) went to the duke at Berkhamſtead, and there ſwore fealty to him; as if he had been already their lawful ſovereign. Hence we may juſtly ſay, that the lives, liberty, and property, of the people of England, were ſurrendered into the hands of the Normans, by the baneful influence of the clergy. For the city of London, following the example of the clergy, ſurrendered, and afterwards the whole kingdom without any further reſiſtance.

Thus William the firſt obtained the crown of England, by the favour of the clergy, and not by the power of his ſword, as, they would ſeem to intimate, by his ſurname of conqueror. A name impoſed upon him, after his death, by the clergy, in order to ſcreen the infamy of their own actions from poſterity; that future generations might aſcribe, the miſerable ſtate of the people, to the conqueſt of William, and not to the dark treachery of a body of men. who had under a maſk of religion, abuſed every truſt of confidence repoſed in them; and betrayed their flocks, bound hand and foot, like ſheep to the ſlaughter.

From this time, civil and religious tyranny, walked hand in hand, two monſters, till then, unknown in England; which are, equally, the common enemies to mankind, and have, at all times, united againſt every principle both of civil and religious liberty. This is the true origin, of the alliance between church and ſtate, ſo much contended for by ſome of our eccleſiaſticks; who have renounced the pennances of popery, but would fain retain both its pride, and its power.

After the coronation of William the firſt was well over, in the year 1066, it was hinted to the cities, boroughs. and other incorporated bodies of men in the rural tithings, that a preſent to their new king would be acceptable; and the king, in a proclamation,

a proclamation, confirmed the ancient rights, and privileges of the people. I only mention this to ſhew, that there were, incorporated bodies of men, at that time; and that their incorporated rights were acknowledged, by William himſelf, before any bodies of men were incorporated by the charters of the ſucceeding kings.

In the year 1068, the king openly declared the tyrannical principles upon which he intended to govern the kingdom, by an act which could not be miſtaken. And that was by impoſing, by his own authority, without the conſent of parliament, or any body of men elected by the people, what the ancient hiſtorians call an intolerable tribute; which ſome have confounded with a tax, called *danegeld*; however, it is no matter what they call it, it was taxing the ſubject, without the conſent of parliament. From this time, all confidence vaniſhed between the king and the Engliſh; who now ſaw plainly they had no ſecurity, either for their perſons, or property.

And they were not miſtaken; for, ſoon after, the king ſeized upon the eſtates, of ſuch as he had reaſon to ſuſpect, and impriſoned their perſons at his pleaſure. And, in order to keep the nation more in ſubjection to his will, he built caſtles in many parts of the country, and garriſoned them with Norman ſoldiers. After this, he obliged them to deliver up all their arms, and forbad them the uſe of fire and candle, after the evening bell had rung eight o'clock. Yet, notwithſtanding all theſe precautions, the king could not prevent many conſpiracies, and ſome attempts to recover their liberty; but which, being fruſtrated, only ſerved to make their condition the more intolerable.

The king at firſt ſeems to have been inclined to draw a line between the ſovereign authority in the ſtate and the internal police of the country. With regard

regard to the firſt, he was reſolved, by an arbitrary power, to keep it in his own hands, and make his edicts carry the force of law, without any regard to the elective power in the Saxon parliaments, which he was determined to aboliſh, and not to ſuffer them to meet and controul his acts of ſtate. So that, by this means, he uſurped an abſolute power over the lives and property of his ſubjects; by not permitting the houſe of commons, or, as it was then called, the common council, to aſſemble; which was the true cauſe of the conteſt between the king and his people. But with reſpect to the internal police of the country, ſo far as relates to the keeping of the peace, and doing juſtice between man and man; I apprehend he had ſome intention of continuing it upon the old Saxon foundation, as it was veſted by them in the people of the reſpective tithings. However, the only reaſon I have to ſuppoſe this is, becauſe he did not deſtroy the elective power of the people, in the towns and rural tithings, till the year 1070; which was four years after his coronation.

The king was a man of too much penetration not to ſee, after what had happened, that by continuing the towns and rural diviſions incorporated, he continued ſo many enemies incorporated, and united their ſtrength againſt himſelf; except he could have perſuaded the Engliſh to have been ſatisfied to walk in a narrower circle, and confine themſelves merely to keep the peace in their reſpective diviſions. But when the king found the Engliſh were calling in foreign aid, and eſpecially the Danes, who had great pretenſions to the crown and much natural intereſt in the country, he plainly ſaw that all temporizing meaſures were at an end; and therefore reſolved, in the year 1070, to deſtroy the elective power of the people, root and branch; and conſequently to diſſolve all incorporated bodies.

For the better execution of this deſign, he previouſly put his garriſons and fortifications in a proper ſtate of offence and defence; and, at the ſame time, had an army of Normans in the field, ready to march againſt all diſobedient oppoſition. He then publiſhed an abſolute order, forbidding all elections in every town and rural diviſion in the kingdom. This was putting his finger upon the great artery of the conſtitution, and ſtopping the circulation of all power ariſing from the Saxon principles of government, which, in a moment, extinguiſhed all appearance of the life of liberty in this land. This action is what hiſtorians would endeavour to hide, by ſlightly paſſing it over, with only obſerving, that he ſuddenly removed the Engliſh from ſuch poſts as gave them any power and influence over their countrymen.

As all officers and authority in the interior departments of the ſtate ſprung from the people, it is very evident that, by their elective power being now aboliſhed, the names of the offices and officers, proceeding from thence, muſt likewiſe be aboliſhed. For it is acknowledged by all authors, that, from this time, we hear no more of the Saxon *ealdormen* and *thanes*, which were titles of office, and not titles of honour. But, from this period, there appeared a new order of men, with new authority, derived from the king; which were entitled counts, viſcounts, barons, vavaſours, eſquires, and others; names taken from the Norman and French tongue.

It was out of theſe orders of men, whoſe titles were titles of honour and not titles of office, to which we muſt add the clergy, that the king formed his aſſiſtants, in the execution of his new plan of government; under which England was held in ſlavery and bondage for one hundred and forty-ſeven years. He placed the legiſlative authority in himſelf, and a great council, compoſed of the dignified clergy, and

and the nobility of the realm (the latter of which were of his own creation) all ſubject to his own ſummons; and he generally aſſembled this great council, three times a year; at Chriſtmas, Eaſter, and Whitſuntide. And from many circumſtances, it appears, that the king admitted a right, in this body of men, to conſent to ſuch laws, as ſhould be binding upon the people.

Whoever gives himſelf a moment's reflection, upon the nature of this great council, muſt ſee that, though the king created all the nobility of the realm, yet the pope nominated all the dignified clergy to their biſhopricks, abbeys, and other benefices; which gave them a title to their ſeats, in the legiſlative authority. And conſequently the Roman pontiff, a foreigner at the head of the hierarchy, had perhaps more influence in making the laws of England, than the king and all his temporal lords; therefore it is no wonder, that the clergy ſhould incline thoſe laws, to pillage the people, in the manner they did, for ſo many ages,

As to the reſt of the buſineſs of the nation, it was under his own direction; he appointed all the officers that were to preſide over the people, both civil and military; and nominated his Norman counts to be governors over the ſhires; from whence they took the name of counties. A count was then the higheſt title of honour in England; for the king himſelf being only a duke, in Normandy, would not admit of any title equal to himſelf.

It was the cuſtom of the Saxons to ſet apart, a quantity of land, for the publick ſervice; which was rented out, and accounted for, in the department to which it belonged. The crown, under the Saxon kings, had many of theſe lands, which were applied to pay the ordinary expence of government; and I apprehend it to have been the

ſame in the ſhires, to bear the expence of the ſhire-militia, and other exigences, of the internal police, of the ſhires. From whence it came, that at the diſſolution of the old government of the ſhires, ſuch a quantity of land fell into the hands of the king, that he hardly knew how to diſpoſe of it. This land he divided into manors, and baronies, and gave them away to his Norman nobility, gentry, and clergy, who held them, as fiefs of the crown; from whence come our court-barons, manor-courts, and court-leets. As to the internal police of the country, he placed it in the hands of officers, of his own making.

Thus king William the firſt, deſtroyed all the elective power, conſtitutionally placed in the people of England, and reverſed the Saxon form of government, which was founded upon the common rights of mankind, and eſtabliſhed an arbitrary power, in himſelf; conſequenly, from this time, all power, authority, and honour in the ſtate, deſcended from the king, and the lives and property of the ſubject were at his mercy. With this deſpotic rule, he continued to govern England, for the ſpace of twenty one years, when he died; and left the crown by his will, to his ſecond ſon William, who ſucceeded him by the name of William the ſecond; and aſcended the throne, in the year 1087.

CHAPTER

CHAPTER IV.

From William the ſecond to the reſtoration of the conſtitution, by the great charter, in the reign of Henry the third.

WILLIAM the ſecond was hated, both by the Normans and Engliſh, as a perfect brute in his behaviour, and manners. It is remarked, that he governed himſelf neither by religion, honour, nor honeſty. Such a character as this would not contribute much to the reſtoration of a government, founded upon the common rights of mankind; and therefore the Engliſh were very happy, in the fortunate arrow of Sir Walter Tyrrel, who ſhot him through the heart, at a hunting match; and thus relieved the world of his tyranny, after a reign of twelve years.

It was happy for England, that Henry the firſt who ſucceeded his brother William, found himſelf in a very critical ſituation, between his deſire of having a crown, and the means of obtaining it He was the youngeſt ſon of William the firſt, and born in England; which was his only pretenſion to the crown, in oppoſition to his older brother Robert, who was abſent in the holy land; which gave Henry a great advantage over him.

But Henry's beſt title was the favour of the people; whom he aſſembled together (*populo univerſo*) as ſay ſeveral hiſtorians. In this aſſembly he promiſed to aboliſh all rigorous laws, made by his father and brother; that he would reſtore the laws, of Edward the confeſſor; in ſhort, he promiſed to reſtore the form of government, as eſtabliſhed under the Saxon-monarchy. This declaration met with general applauſe, and gained him the ſupport of the people, which he wanted, and this is what

ſome call the election of Henry the firſt. However, be that as it will, with the ſupport of the people, he over-ruled all oppoſition; and was crowned, king of England, three days after the death of his brother William.

Though Henry had, by this means obtained the crown, yet he was far from being ſecure in the poſſeſſion of it; ſince he well knew his brother Robert, would be both able, and willing, to conteſt it by the ſword, whenever he arrived at his Norman dominions. And therefore, he was under a neceſſity to fortify himſelf, by obtaining the affections of all his Engliſh ſubjects; and convincing them by undoubted facts, that he intended to govern the kingdom, agreeable to his former declaration.

To manifeſt this his intention, he aſſembled together the great council (as all agree) which was eſtabliſhed by his father; and, ſome ſay, the commons came to this aſſembly; which is not unlikely, though uncertain. However, it was in this aſſembly, that he renounced all unjuſt prerogatives uſurped by the two late kings; aboliſhed many grievous taxes; and reſtored the laws of king Edward the confeſſor, as the law of the land; which ſecured, to the people, their perſons and property. This was peculiarly advantageous to the Normans, who thereby gained a title, to their eſtates, by law; and no longer held them, at the pleaſure of the king; it alſo united the Engliſh, and Normans, in one point of intereſt; which afterwards contributed much, to the reſtoration of the Engliſh conſtitution.

It is a maxim with all tyrants, to conſider every thing, they have a power to take, as their own by right, And we may obſerve, that moſt of our kings. after what is commonly called the conqueſt, talk in that ſtyle; for, in their written charters, they

they give, and grant, as a new thing, what the people of England had enjoyed for ſix hundred years before. For what they grant in writing refers plainly, by their own words, to the ancient cuſtom of the people; and therefore how it came to paſs, that thoſe written charters could be underſtood, by any man, to be the origin of our rights, and privileges, appears ſtrange to me, and, indeed, ſeems too great an abſurdity to mention.

When William the firſt came to the crown, no body had any concern in the tranſaction, but the clergy, and the city of London; to whom he promiſed, in general terms, to preſerve the laws and cuſtoms, of the church, and of the city of London, in theſe words: "William, king, greet William, biſhop, and Godfrey, their portgreve (or chief magiſtrate), and all the borough-men without London: I will that you enjoy all the laws, and cuſtoms, you enjoyed in the days of king Edward."

But Henry the firſt, did more than promiſe; for he, in ſome meaſure, reſtored the elective power of the people, within the city of London, as appears by his charter to them in theſe words: "Know ye that I have granted to my citizens of London, to hold Middleſex to farm for three hundred pounds, upon account to them and their heirs; ſo that the ſaid citizens, ſhall place, as ſheriff, whom they will of themſelves; and ſhall place whomſoever, or ſuch one as they will of themſelves, for keeping of the pleas of the crown and of the pleading of the ſame, and none other ſhall be juſtice over the ſame men of London. And further, there ſhall be no more miskenning (or miſunderſtanding) in the Huſtings, nor in the folkmote (that is, in the general aſſembly of the people) nor in any other pleas within the city. And the

huſtings may ſit once a week, that is to ſay, on Monday."

Henry likewiſe granted a charter, to the whole kingdom, in which he promiſes to reſtore the ancient form of government, with all the rights, franchiſes, and privileges of the people; which, afterwards, ſerved as the ground work of the great charter of liberties, obtained from king John. But ſo carefully had the enemies, of publick liberty, been to deſtroy theſe authentick vouchers, of the freedom and privileges of the Engliſh people; that there was only one to be found in the reign of king John. And what made the recovery of this charter the more valuable was, that it was given voluntarily, by Henry, only thirty-two years after the conqueſt; when moſt men, then living, muſt remember both the loſs of their liberties, and his promiſe to reſtore the Saxon form of government; which was offered as a condition, for their aſſiſtance to Henry, in obtaining the crown. And had England continued a ſeparate kingdom, from Normandy, as it was in the beginning of this reign, in all probability the Engliſh conſtitution would have recovered its ancient purity. However, from this time, the conſtitution began to revive, and emerge from that load of oppreſſion, that it had laboured under, for the ſpace of thirty-two years.

In the diſputes, for the crown, between Stephen and Matilda, the aſſiſtance of the people was abſolutely neceſſary on both ſides; and therefore they readily granted charters, to many towns, for the government of themſelves, upon their old Saxon principles; by which the elective power of the people was re-eſtabliſhed in thoſe towns, which, in time, operated to the great end of reſtoring the Saxon conſtitution.

Stephen, who ſucceeded Henry the firſt, had a powerful competitor, for the crown, in the perſon of

of Matilda, who was deſcended from our Saxon line of kings, and, as ſuch, had many friends to ſupport her title. And, therefore, Stephen was very liberal in his favours; he confirmed the charter of Henry, and engaged to carry it into execution, whenever, by their aſſiſtance, he ſhould be eſtabliſhed upon the throne.

Upon this the Barons promiſed him a conditional ſupport; that they would be faithful to him no longer than he was faithful to his promiſes, that they had been amuſed, by promiſes, from all the kings ſince the conqueſt, and therefore they ſhould now take their own meaſures. And accordingly, they fortified their caſtles, and put themſelves in a poſture of defence; ſo that, in a little time, there were above a thouſand fortified caſtles in the kingdom, which afterwards contributed much to the reſtoration of the conſtitution. However, the ſucceeding wars prevented any further progreſs, during this reign, in reſtoring the people to their elective rights.

Henry the ſecond ſucceeded Stephen to the throne; and he came to the crown with the approbation of all parties. The hopes of the Engliſh were much elevated upon his acceſſion, becauſe he was deſcended from their ancient kings; they vainly imagined he would reſtore to them their old form of government, and re-eſtabliſh their elective power. But ſuch generous ſentiments as theſe are ſeldom known to deſcend with the poſterity of kings. And accordingly, Henry the ſecond contributed nothing to this deſirable end; but left the legiſlative authority, in the ſame condition as he found it.

Richard the firſt, ſucceeded his father Henry the ſecond, in the throne. He was a prince of ſuch a warlike genius, that it ſeems to have engroſſed the whole man; and to have excluded all other thoughts, but what might contribute to the gratification of his

his ruling paſſion. He had engaged himſelf, with the king of France, to proſecute a war againſt the Saracens, in the holy land, agreeably to the cruſading madneſs of thoſe times; which involved him in an expenſe which his ordinary revenue was not able to ſupport. This put him upon many expedients of raiſing money, to execute his enterpriſe; ſome of which were very unjuſt, arbitrary, and impolitick. But what I would chiefly obſerve is, his ſale of every thing that he could part with, or find a purchaſer for. We cannot expreſs, his diſpoſition to ſell, better, than by his anſwer to his friends, who adviſed him againſt ſuch ſales; for he ſtopped their mouths by telling them, "He would ſell the city of London, if he could find a purchaſer."

It was under this ſelling prince that many of our cities, towns, and boroughs, purchaſed back their old Saxon rights of being governed by their own magiſtrates; where they had not done it before. For it had been a frequent practice, after Henry the firſt, to purchaſe back ſometimes a part, and ſometimes the whole of their old Saxon privileges, liberties, and franchiſes, for a fine to the king; for which the kings, ſay the hiſtorians, were wont to give their charters.

And from hence it comes, that our corporations hold their rights, by written charters; which were always made by way of grants. In ſome account which I have ſeen, of that part of the revenue proceeding from fines, the author obſerves, That as for fines for grants, confirmation of liberties, privileges, franchiſes, and exemptions, there are numberleſs inſtances on the revenue roll. The city of London bought back the privilege of having a mayor, or chief mngiſtrate, of their own electing; and a power of electing two ſheriffs to ſerve for the city of London, and county of Middleſex.

Thus

Thus we may ſee by what means, the cities, and boroughs, recovered by degrees their ancient Saxon government, and became once more little republicks within themſelves. For though they had changed the Saxon names of officers, and offices, yet the power and duty were ſtill the ſame. But as for the rural tithings, or the Saxon country diviſions, they were ſo confounded, and entangled, with the different rights of the baronies, and manors, and other Norman eſtabliſhments, that they were never able to make the leaſt attempt to recover their old tithing-form of government.

And notwithſtanding the towns had advanced thus far in their recovery, yet they were continually in danger of a relapſe, from the arbitrary power of the crown; which frequently forced them to ſurrender their charters back again, in order to oblige them to purchaſe anew. So that they had no good ſecurity, till they had got poſſeſſion of their old ſhare of the legiſlative authority. However, they had, by this time, gained a ſtrength ſufficient to make a ſtand for their liberty, the firſt time the perplexed circumſtances of the king afforded them an opportunity; which preſented itſelf in the following reign.

John, properly ſurnamed lack-land, brother to Richard the firſt, ſucceeded to the throne with a diſputed title. And the Engliſh did now, what they had never failed to do, at the beginning of every reign ſince the conqueſt, inſiſt upon the reſtoration of their ancient mode of government. And which the kings, on their part, had as often bound themſelves, and their poſterity, by the moſt ſacred oaths, imprecations, and ſolemn charters, to reſtore; but which they never regarded longer, than while they obtained a power to break them. However the Engliſh, by this means, kept up a title to their Saxon privileges, and franchiſes, and the

Norman

Norman kings, thereby, acknowledged their title to be juſt.

There are three things obſerved as principal events of this king's reign. The firſt was, his war with the king of France; the ſecond, his conteſt with the pope; and the third, which was his greateſt misfortune, his quarrel with his people. By the firſt, happily for England, he loſt all his Norman and French dominions, and with them his ſupport. For theſe provinces had always, ſince the conqueſt, furniſhed the kings of England with a foreign army, to keep the Engliſh in obedience, and ſubmiſſion to their tyrannical power; without which, all their pretended right of conqueſt, would have availed them nothing. By his quarrel with the pope, he loſt the benefit of that enthuſiaſtick regard, which the ſuperſtition of the people hath generally entertained, for the ſentiments of the clergy. For the church in this caſe, found it her intereſt to diſcharge his ſubjects from obedience to his perſon; and expoſed him as a prey to all his enemies.

The barons thought this a proper opportunity to declare themſelves; and therefore ſent the king word, that, before they went over with him to the wars in Normandy, they expected he ſhould reſtore to them their privileges, purſuant to his promiſes before his coronation. And in an aſſembly, of the barons, held at London, cardinal Langton informed them, that, before he gave the king abſolution, he had cauſed him to ſwear that he would reſtore the church, the nobility, and the commonalty to their rights and privileges. But as difficulties might occur in the particulars to be required of the king, they might have recourſe to a charter, granted by Henry the firſt, of which he had fortunately found a copy; notwithſtanding the pains taken to bury it in oblivion.

The

The barons reſolved to make this charter the ground of their demands upon the king; and immediately entered into an aſſociation, and bound themſelves by an oath, to ſtand by each other; and uſe their utmoſt endeavours, to obtain the re-eſtabliſhment of their ancient rights; and particularly the elective power of the people. This was the firſt aſſociation that was ever made, in England, in defence of the rights, and privileges of the conſtitution againſt the king.

They ordered a committee to attend the king, at London, with a petition, praying the re-eſtabliſhment of their ancient rights and privileges. John, in order to gain time, deſired they would ſtay for an anſwer till the following Eaſter. As ſoon as Eaſter was come, the nobility and gentry met, at Stamford, with a powerful army; in which were two thouſand knights, with many horſe and foot, armed with divers weapons. The king was at Oxford, in expectation of their coming; but hearing of their numbers, and poſture of defence, did not think fit to expoſe his perſon in a conference with them. And, therefore, he ſent the Earl of Pembroke to know, what the laws and liberties were which they mentioned in their petition. Upon which they delivered a long memorial of the laws and cuſtoms, obſerved in the times of the Saxon kings; and at the ſame time, declared, "That, if the king would not confirm them, they were reſolved to compel him by force of arms."

John had no ſooner read this memorial, but he ſwore a great oath, and ſaid; "That he would never grant his ſubjects ſuch liberties, as would make himſelf a ſlave." And, for the better ſecurity of his perſon, he retired to the Tower of London. The king's anſwer convinced the barons, they had nothing to expect but from force; for which they were much better provided than the king. Therefore,

fore, having previouſly concerted meaſures to get poſſeſſion of the city of London, they amuſed the king with the ſiege of Northampton and Bedford, till they knew the ſucceſs of their negotiation in town, and, to their great ſatisfaction, there arrived, in a few days, an account, that one of the gates of the city was to be put into their hands.

Upon this intelligence, they put themſelves in motion; and two forced marches brought them to Aldgate. This gate being opened to them, they entered the city at break of day before the king, who was in the Tower, had the leaſt notice of their approach. The king, finding a general defection, and that, in his preſent condition, there was no remedy but compliance, ſent the Earl of Pembroke to inform the Barons, that he was ready to grant their demands. And, after a ſhort negotiation, it was agreed, That the king, and the Barons, ſhould meet, on a day prefixed, in a meadow called Runnemede, to conclude this affair.

The day being arrived, the barons came, in great numbers, to the place appointed; while the king came attended only by five, or ſix lords. Here the barons tendered, to the king, two charters; one called the great charter of liberties, or MAGNA CHARTA; and the other the charter of the liberties of the foreſts. Theſe two charters were then ſigned by the king, and witneſſed by all the lords, ſpiritual and temporal, then preſent; ſealed with the great ſeal, and confirmed by the king's ſolemn oath. And the king appointed twenty-five barons, and veſted them with a power to ſee theſe charters duly executed. He likewiſe granted letters patent, directed to his Sheriffs, empowering them to take the oaths of all his ſubjects, that they would punctually obſerve the two charters; and, if neceſſary, compel the king himſelf alſo to obſerve them. And laſtly ordered, that the barons ſhould keep poſſeſſion of the city

city of London; and that the cardinal, archbiſhop Langton, who was a great friend to the cauſe, ſhould keep poſſeſſion of the tower of London.

The king being heartily mortified at ſeeing himſelf thus ſtripped of his tyrannical power, retired to the Iſle of Wight, with a few followers; that he might, with more ſecrecy, take proper meaſures to recover his authority. And, inſtigated with pride, revenge, malice, and deſpair, he reſolved, rather than ſubmit to reſtore the ancient conſtitution, and government, to ſee England buried under her own ruins. But finding no remedy in himſelf, having neither men nor money, he choſe to follow the example of William the firſt; and once more offer the lands of England, as a prize, to any adventurers that would fight for them.

To execute this plan, he ſent over, ſome of his followers, into France, Flanders, and Germany; to engage volunteers in his ſervice. He empowered them to offer and make titles, in form, of the confiſcated eſtates of the rebel barons, as he called them. And, in a ſhort time, he had the ſatisfaction to ſee vaſt numbers arrive from Brabant, Flanders, Normandy, &c. all ſoldiers of fortune, ready to venture their lives for an eſtate. He likewiſe ſent his complaints to the pope, and begged the protection of his holy arm. And, as the wicked, tyrannical invaders, of the common rights of mankind, have ſeldom failed to meet with the protection of the church, the pope abſolved John from his oath, annulled the two charters, and excommunicated the barons.

The thunders of the church, and the new army of foreigners, from the continent, would undoubtedly have reduced the barons to a very low condition, had they not foreſeen the ſtorm, and provided for the danger. The barons applied to the king of France for protection againſt their enemies; and

and offered, in return, to ſet Lewis, the dauphin of France, upon the throne of England; upon condition he would execute the charters, granted by king John. The king of France granted their requeſt; and ſent an army, and ſeven hundred ſail of ſhips, commanded by his ſon Lewis; which effectually broke all the meaſures of king John. For finding it impoſſible for him, to prevent the French from landing, he retired to Wincheſter without much further reſiſtance; and after wandering about, for ſome time, upon the eaſtern coaſt, fell ſick and died; after making his will, and leaving his ſon Henry heir to his title and diſpute.

Henry the third, who was then a minor, of ten years old, and the firſt infant-king that ever reigned in England, had the good fortune to be governed by the great Earl of Pembroke, who was a man of temper, judgment, courage, and conduct; and Henry's faſt friend, and protector.

The Earl ſaw clearly, that the Barons would never give up their charters; but would defend them, either againſt Henry, or Lewis the dauphin of France, to whom they had offered the crown, which ever, fortune ſhould give them, for their king. The barons had no particular objection to Henry; their only object was, the reſtoration of their rights, and privileges, in the eſtabliſhment of their charters. Hence the ſentiments, of each party, being known, there remained little obſtruction to an agreement. The barons, on their part, acknowledged Henry to be king of England; and agreed, to join their forces with his, to drive Lewis out of the kingdom. And the king on his part, confirmed, and eſtabliſhed the charters of the king his father, to them, and their poſterity for ever.

All troubles being happily ended, the Engliſh impatiently expected the performance of this agreement;

ment; which was honeſtly and faithfully executed, by the noble earl. And had he lived, in all probability, it would have been ſtrictly fulfilled. He ſent expreſs orders to all the ſheriffs in the kingdom, to ſee the two charters, of king John, duly obſerved; and to puniſh with ſeverity all violaters thereof.

And as the firſt ſtep, to the effectual execution of theſe charters, was to reſtore the elective power of the people; by ſummoning what the Saxons called their wittena-gemot, or aſſembly of the wiſe men of England; or what we now call, the parliament of England. Accordingly, the earl of Pembroke, who was choſen regent of the kingdom, ſent letters of ſummons, to all the barons of the realm ſingly; and to the cities, boroughs, towns, ports, and freeholders: to elect deputies, to repreſent them in parliament, agreeable to the direction of the great charter of liberties. Which letters of ſummons are to be found, at this day, amongſt the records in the tower, upon what is called the clauſe roll, for the year one thouſand, two hundred and eighteen. And the annals of Waverly likewiſe ſay, That the wiſe men of England, or parliament, met, at London, after Michaelmas, in the year 1218; and revived the liberties of England, according to the charter of king John.

Thus the people of England, at length recovered their elective power in parliament; which they had enjoyed, under their Saxon kings, for ſix hundred years, before what is called the conqueſt: after having been held, in cruel ſlavery, and bondage, for one hundred and forty ſeven years; that is, from William the firſt, to the reſtoration of their elective power, in the ſecond year of the reign of Henry the third.

Which great event ought to be held in commemoration for ever, by a day of publick thankſ-

giving, feſtivity, and joy; as a perpetual memorial of that great deliverance. And may the Engliſh nobility and gentry, be for ever inſpired with the ſpirit of our ANCIENT BARONS; and teach their poſterity, this one everlaſting truth: THAT THE POOR MAN'S ANNUAL ELECTIVE RIGHTS, ARE THE RICH MAN'S BEST SECURITY: a truth which the barons of England, demonſtrated by a dear bought experience, of one hundred and forty ſeven years!

CHAPTER V.

Some general remarks, concerning the ſtate of things, after the eſtabliſhment of the great charter.

AS I hinted before, I do not mean to attend to the various attempts that were made, to overthrow the reſtoration of the elective power of the people, in the remainder of the long reign of Henry the third, and ſeveral of the ſucceeding kings. But after ſome general reflections, I will proceed, to the reign of Charles the firſt, and his ſucceſſors; by which we are more immediately affected.

Notwithſtanding the great charter had reduced the power of the crown, within the bounds of a legal authority, and re-eſtabliſhed the elective rights of the people; yet there was a vaſt exceſs of power ſtill remaining in the crown, which conſtitutionally belonged to the people. For under the Saxon eſtabliſhment, the appointment of all the officers concerned in the internal police of the kingdom, and the militia was in the hands of the people, or their immediate repreſentatives. All which, at the reſtoration of the conſtitution, were left in the power of the crown; excepting thoſe towns that had obtained-

tained charters, from ſome of the kings, and purchaſed back the privilege of being governed by magiſtrates of their own election.

The vaſt quantity of land that had now got into the hands of the crown, being diſtributed to the favourites of the king, as fiefs, was a great additional ſtrength to the prerogative. And many places of honour, profit truſt and power, which had formerly been in the gift of the people, now operated againſt themſelves. We may add to this, that under the Saxon kings, there were only two ſuperior courts of law, which were both eſtabliſhed by Alfred the great, after the union of the ſeven kingdoms into one. Theſe were the court of common pleas, and the high court of chancery; though perhaps called by other names, and revived with the conſtitution.

But William the firſt, eſtabliſhed three new courts of law; whoſe rules and genius, were better adapted to his arbitrary mode of government. Theſe were the court of king's bench, the court of exchequer, and the ſpiritual court. Theſe three courts were begot by the tyrannical union of the king and clergy; and were made the inſtruments of the arbitrary impoſitions of both, And though theſe courts have been much reſtrained, yet they ſtill retain a great deal of that arbitrary ſpirit, from whence they were engendered. And the clergy ſtill held their place in the legiſlative authority, always ready to unite with the crown, to oppoſe every further attempt of the people, to recover either their civil or religious liberty.

Theſe numerous ſources of power, gave the crown many advantages; which were always employed to counteract the efforts of the parliament. Hence it was with difficulty, that the elective power of the people, was able to ſtand its ground againſt ſuch of our kings as were inclined to eſta-

bliſh an arbitrary government; which often involved the kingdom in a civil war, for want of contriving ſome milder method of reſtraint than that which was preſcribed by the barons, of making war upon the king. For after they had once found by experience, that oaths would not bind king's, it was in vain to truſt them any further.

To remedy this evil, they ought to have eſtabliſhed a new mode of aſſembling the parliament, when the king would not do his duty, in that reſpect; which is nothing more than adminiſtering the conſtitution to his people. He ſhould, in that caſe, be entreated by earneſt petition, of ſome body of men appointed for that purpoſe, to aſſemble his parliament. And if the king after this, ſhould not iſſue his writs in forty days, then this body of men ſhould be empowered to give orders, to the proper and uſual officers in the king's name, to aſſemble the parliament, which ſhould be as good in law, as if he himſelf had given the proper orders for ſo doing. For the whole nation, ſhould not loſe the benefit of the conſtitution, through the obſtinacy, or ill-judged opinion, of a king; who ſhall refuſe to execute the duty of his office.

This medium is much more expedient, than a civil war. For all the conteſts we have had with our kings, have always been with ſuch, as were remarkable for their weakneſs of underſtanding, or obſtinacy of temper; and at the ſame time, were governed by ſome traiterous favourites, who perſuaded them to act againſt the intereſt both of themſelves, and their people; and therefore a power of this kind, would be very happy for both king and people. And till ſome ſuch power as this be eſtabliſhed, in our ſtate; the people of England will be obliged every now and then, either to have recourſe to arms, or to endure many hardſhips, as often as they ſhall have the misfortune to be governed

verned by a weak prince; for it is an hundred to one, but ſuch a king will be governed by a knave. It is an abſurdity to ſuppoſe that a king, who has a deſign upon the liberties of the people, will call together a body of men, that he knows would be both able and willing, to counteract his deſigns; neither would ſuch a king diſſolve his parliament, if he choſe their continuance, as a mode, to rob the people of their elective rights.

There were two alterations, reſpecting the elective power of the people, which muſt be particularly noticed. The firſt is, that after the reſtoration, in the reign of Henry the third, many of our boroughs, which uſed to ſend members to parliament, were not then incorporated; and therefore had no chief magiſtrates to repreſent them in parliament, as was uſual in the Saxon times. And even thoſe that had obtained charters, were never afterwards repreſented by their chief magiſtrates; but both were left at liberty to elect any other honeſt, wiſe men, they thought qualified to execute their truſt. So that from this time, the member of parliament, for a city, or borough, was detached from the chief officer of that city; but they ſtill continued the principle of electing a new houſe of commons every year. However this has given ſome of our modern kings, an opening to introduce a new mode of reſtraining the elective power of the people; that is, by continuing parliaments longer than one year.

The ſecond alteration is, that at the reſtoration of the elective rights of the people, the titles to their election, in the different cities, boroughs, towns, and ports, became various, from a variety of circumſtances they found themſelves in at that time; which unhappily reduced the number of electors; one of the greateſt misfortunes that can

befal a ſtate, formed upon the common rights of mankind. The city of Weſtminſter in particular, and all others of the ſame nature, ſtill retain the true conſtitutional right of election; where every reſident inhabitant, that pays his ſhot and bears his lot, is entitled to his election; and all others are highly injurious to the liberty and conſtitution of this country, as they expoſe the electors, to many corrupt practices.

As long as the foreign trade of this nation was confined to the natural productions of the earth, ſo long the weſtern parts of England, and particularly the county of Cornwall, would be the moſt rich, flouriſhing, and populous part of the kingdom; becauſe of the valuable productions of their mines, and particularly their tin; for which they had a foreign trade as ancient as the flouriſhing ſtate of the cities of Tyre, and Sidon, which uſed to import tin from Cornwall. This I take to be the reaſon why we find more ancient boroughs, in that county, than in any other But now that trade hath extended itſelf, into many branches of commerce by our manufactories, and other articles of exports; the people of Cornwall, have loſt their ſuperiority in numbers. So that there is now an amazing diſproportion, between the number of their repreſentatives and electors, when compared with any other county in England: which has reduced their boroughs, and others in the like circumſtances, to the ignominious reflection, of being the rotten part of our conſtitution.

All towns are ſubject to decay by time, and change of things, ſuch as war, and particularly by trade; which laſt ſurpriſingly moves the inhabitants from one part of the country to another. By which means, many of our old boroughs are almoſt deſerted by their inhabitants, and are fallen quite into ruin. Some of them, can ſcarcely be called a village;

village; and others are become the private property of one family, who now nominate perhaps two members to ſit in the houſe of commons; and call ſuch nomination a free election.

Thus the elective power of the people, hath with the boroughs, been falling into decay, while many of the villages and ſome parts of the open country, that uſed to compoſe our rural tithings, have riſen merely by trade, into great opulence, and magnitude; ſuch as Birmingham, Mancheſter, Leeds, Wakefield, Halifax, and many others. From all theſe concurring cauſes, there is not perhaps, one man in five thouſand, who is now repreſented in parliament, by a member of his own election.

Religion hath always had a great influence, in our political diſputes; and therefore we may remark, that after the appearance of Wickliffe, and the promulgation of his doctrines, religion began to take a new face; and many converts appeared in England, who zealouſly defended the doctrines of Wickliffe, againſt the church of Rome; and though the church found means to divert the blow, at that time, yet his works helped greatly to prepare the minds of men, to receive the doctrines of Luther, and Calvin; who gave the fatal ſtroke to the papal authority, and introduced the reformation into England.

Henry the eight, without any deſign of altering the eſtabliſhed religion, effectually deſtroyed the papal authority, by ſeizing all the lands belonging to the religious houſes; which are reported to have amounted to one quarter of all the lands in England, theſe the king gave, and ſold to his nobility, and gentry; ſo that they ſoon became divided amongſt the people. And many are of opinion, that this diffuſed property operated greatly, in favour of the commons, in the great conteſt between the elective power of the people, and the pre-

rogative of the crown; which happened in the reign of Charles the firſt. And at the ſame time, he cut off the pope's ſupremacy; and his power of nomination to ſuch benefices, as gave the poſſeſſors a ſeat in our houſe of lords, and veſted that power in the crown. Thus the pontiff of Rome, loſt his influence, upon the legiſlative authority of England.

CHAPTER VI.

The reign of Charles the firſt, to the revolution, conſidered.

SECT. I.

Charles the firſt.

WE will now enter upon the reign of Charles the firſt; who had the misfortune to imbibe in his youth all the extravagant notions, poſſeſſed by his father, of the high authority, and prerogative of kings.

Indeed it is a difficult matter for princes, as they are now educated, to receive any enlarged knowledge of men, or things; or to be well acquainted with truth. For their converſation, with men and books, is ſo confined, that they generally receive the little knowledge they have, through the corrupted medium of flattering, and ſelf-intereſted preceptors. And therefore, as they only hear and ſee, through other men's ears and eyes; ſo they never know the truth, till they come to feel by woeful experience, the fatal deception that hath been impoſed upon their minds. Beſides, it is obſerved, that Charles was of a very obſtinate, inflexible

inflexible temper, a narrow genius, and impatient of controul, in his ruling paſſion for power.

His publick character excepted, he had many virtues; he was very temperate as to wine and women; a good huſband; a tender father; and had he not had the misfortune to be a king, was otherwiſe a good man. But, with reſpect to government, he had undoubtedly, a deſign to render himſelf abſolute maſter of the kingdom, and to eſtabliſh an arbitrary power in the ſtate; without any regard to the law of the land, the elective power of the people, or the conſtitution of the kingdom; as appears by numberleſs inſtances whenever they came in competition, with what he fancied his prerogative royal.

King Charles either could not, or would not diſtinguiſh, between the executive power, which our conſtitution has lodged in the crown, and the ſupreme power, which our conſtitution hath lodged in the law of the land, and no where elſe. The executive authority, is the true prerogative of the king; and preſcribes the ultimate limits of his power. Whatever power therefore he may uſe, that is not of this executive genius, is out of the line of his province; and muſt either infringe upon the eſtabliſhed law of the land, or invade the rights and privileges of his parliament; whoſe right of approbation is always previous to his right of action.

Amongſt the various duties, of the king, or chief magiſtrate, the principal, is that of adminiſtring the conſtitution to the people, in calling a new parliament every year; or, at leaſt every time he wants a new ſupply; and diſſolving his parliament at the expiration of every year. The prorogation of parliaments, hath been grafted into the prerogative of the crown, though formerly unknown to the conſtitution: but hath been uſed, in modern times, where the caſe required to have two ſeſſions

in one year, in order to gain a receſs for a ſhort period; but ſeldom or never, to continue the ſame parliament, longer than one year. However, as tyranny is always fertile in inventions, it hath ſince been made an inſtrument, to ſubvert the elective power of the people; and reduce it to a meer ſhadow. We ſhall ſee, the application of this doctrine, in the following hiſtory.

The calling, diſſolving and proroguing of parliaments, have been the points of conteſt that have engaged ſeveral of our kings, who, being curſed with the arbitrary ſpirit of Charles, have endeavoured to deſtroy or render uſeleſs, the elective power of the people. Charles the firſt, ought to have remembered the fate of Edward the ſecond, and Richard the ſecond; who, both of them loſt their crowns, and died a moſt lamentable death, for encroaching upon the liberties of the people, and the rights and privileges of parliament. Not to mention ſeveral other kings, whoſe reigns were rendered inglorious, and their lives miſerable, by the ſame means.

The principles of Charles, and his council, reſpecting the royal authority, were very well known, to his people, before he aſcended the throne of his father. He was of opinion that parliaments had their original being, merely from the conceſſions of former kings; that it was in his power to revoke thoſe conceſſions, and govern without parliaments, whenever he pleaſed: that his prerogative was above the ancient laws, and cuſtoms of the realm: and that thoſe laws, were only meant to bind his ſubjects, and not him. The plain conſequence of theſe principles was, that he was abſolute maſter of the lives, and fortunes of his ſubjects; and might diſpoſe of them, agreeable to his will and pleaſure.

With

With theſe ſentiments, he met his firſt parliament, on the 18th of June, 1625; of whom he demanded a ſupply for the recovery of the Palatinate, and the proſecution of a war with Spain. The two houſes of parliament did not ſeem much affected with his wants, ſeeing they immediately fell upon the religious grievances of the nation; and both joined in a petition to the king, ſetting forth thoſe greivances, and method of redreſs. And, at the ſame time, the houſe of commons called to their bar, Mr. Richard Montague, one of the king's chaplains, for writing a book called, "a Gag for a new goſpel."

The king was much offended with their conduct; becauſe he pretended the calling one of his chaplains to the bar of their houſe, was an encroachment upon his royal prerogative. However they voted the king two ſubſidies, and then returned upon other matters of grievance, relating to the miſapplication of the public money, and the bad conduct of the duke of Buckingham. In theſe they ſpent more time than the king's patience could afford them, without any further mention of the money, which he expected for the ſupport of the war. And therefore he ſent for both houſes, and, in a ſpeech, repreſented to them the neceſſity of granting him a large ſupply. But the commons, being returned to their houſe, proceeded to examine grievances, without any regard to the king's ſpeech. However, they ſoon gave the king a full information of what he had to expect, by a vote of the houſe, in which they reſolved, That religion ſhould have the firſt place in their debates; the ſafety of the kingdom the next; and the ſupply the laſt.

The king, ſeeing what courſe the commons were taking, was extremely offended, and deemed it a manifeſt affront, and contempt of his royal prerogative, thus to diſregard his wants, and preſume openly

openly to attack his favourite, and miniſters, or rather himſelf, under their names; and, at the ſame time, deſpairing to receive a ſpeedy ſupply, he determined to diſſolve them. The commons, having ſome notice of his deſign, haſtily drew up a declaration; wherein they expreſs their loyalty to the king, their reſolution to redreſs the grievances of the realm, and, in due time, to afford his majeſty all neceſſary ſupply, both for the preſent, and all other his juſt occaſions. The king then diſſolved this his firſt parliament, which had only ſat three weeks. But the tranſactions of that parliament, clearly demonſtrate the ſpirit which had taken poſſeſſion of both ſides, from the beginning; for the king was reſolved he would not redreſs the grievances of the people, and the commons were reſolved he ſhould have no money without it.

On this power of granting ſupplies, for the ſervice of the ſtate, depends the conſtitutional ſecurity of the people, in confining the executive power, lodged in the crown, within the limits of its own ſphere: ſo that it may operate only for the good of the ſtate. And the reality of this good, is not to be determined, by the opinion of the king, but by the opinion of the two houſes of parliament; who may, or may not ſupport the actions, or opinion of the king, according as they ſhall find them to be well, or ill founded. When any matter comes to be ſifted, by two ſuch incorrupted bodies of men, as our houſe of lords and commons ought to be; where every object of debate is ſo thoroughly canvaſſed, taken to pieces, conſidered, examined, and re-examined, by five or ſix hundred ſeparate men; their determination carries with it ſuch a weight of authority, and probability of truth, that their opinion is not to be counteracted by the opinion of the king.

And

And it is happy for us, that our conſtitution is ſo formed, as to oblige the king to take the opinion of this body of men, and ſubmit his conduct to their examination. For the king, being in the conſtant poſſeſſion of the executive power of the ſtate, his very office is creative of wants, which he himſelf cannot ſupply. And though a king of England may, for a time, like Charles the firſt, by illegal, and unconſtitutional means, ſqueeze out of his ſubjects a narrow ſupport, for his preſent convenience; yet he never can put his kingdom into a ſtate of proper offence, and defence. So that the firſt extraordinary emergency will, by the mere dint of neceſſity, conſtrain him to call a parliament; and give his people an opportunity, to redreſs thier grievances, under a bad adminiſtration, and to ſhew their gratitude under a good one.

Let us now return to the thread of our hiſtory. The king having loſt the aſſiſtance of his people, by diſſolving his parliament, found no better way to ſupply his want of money, than by extorting from ſome of his ſubjects, under the name of a loan, as much money as they were taxed at, by former parliaments; which was ſoon ſpent in a fruitleſs expedition, to the coaſt of Spain. And this brought on a ſecond neceſſity, to call a new parliament. But, in order to exclude the moſt able men, or at leaſt, ſuch as had given him the moſt trouble in the laſt, he ordered them to be appointed ſheriffs; that they might not be elected members. However, in that, he was miſtaken: for thoſe popular members were elected for other places, and the parliament met the 6th of February, 1626; and was entirely of the ſame ſentiments with the old one.

In order to examine things, with more clearneſs, they appointed three committees; one for ſecret affairs, another for grievances, and a third for religion; and

and theſe committees continued to prepare their ſeveral reports, and the houſe to receive the ſame, notwithſtanding the king's application for money, to carry on the war; which, indeed, was the ſole reaſon of his calling them together. And therefore he ſent a ſharp letter, to the houſe of commons, with five articles of expence; and deſired to know, without further delay, what they intended to give him. In order to ſatisfy the king, in this particular, they unanimouſly voted him four ſubſidies, and three fifteenths; and by this vote, which was only declarative of their intentions, left it in the power of the king, to have it or not have it, as he ſhould redreſs or not redreſs their grievances.

The king ſaw, with a longing eye, this golden apple hung up, by a vote of the houſe of commons, to his full view; but not within his reach. And he perfectly underſtood the motives, of the houſe, for ſo doing; as it was preciſely the point of difficulty, put upon him by the laſt parliament. And therefore he ſent, for the two houſes, to Whitehall, as he ſays, "To ſhew them their errors." And in a ſpeech, partly delivered by himſelf and partly by the lord keeper, we may find the true ſentiments of the king concerning parliaments. In the introduction, to the lord keeper's ſpeech, it is laid down as a principle, That the houſe of lords, and houſe of commons are only the king's general council; and ought to be confined within the limits of a council. To whom he ſays, "That no king was ever more jealous of his honour, or more ſenſible of the neglect, or contempt of his royal rights, which his majeſty will by no means ſuffer to be violated, by any pretended colour of parliamentary liberty; however, that his majeſty doth not forget, that the parliament is his counſel, and ought to have the liberty of a counſel. But his Majeſty underſtands the difference between counſelling

ſelling and controling; and between liberty, and the abuſe of liberty."

This being laid down, as a general doctrine, he proceeds to give ſome particular inſtances, where they had tranſgreſſed the limits of a council, ſaying: "That they had not corrected, ſome members of their houſe, for ſpeaking diſreſpectfully of his miniſters, and government; though his majeſty had commanded them ſo to do. That they had been enquiring after articles of accuſation againſt the duke of Buckingham; which he would not ſuffer to be done to his moſt menial ſervant. That they had ſuffered the greateſt council of ſtate to be cenſured in their houſe. That they had ſuffered his government to be paralleled with times of the moſt exception. That their committees had preſumed to examine the letters of ſecretariesof ſtate, and his own. That they had ſent a general warrant to his ſignet office to examine records, books, and private notes, which were made for his majeſty's ſervice. That they had not given his Majeſty a ſupply, equal to the eſtimate of expence that had been laid before them. That they had employed only two days, in twelve, about the ſupply, while their inquiſition, againſt his majeſty's directions, had proceeded day by day." And therefore, the lord keeper ſaid, "His majeſty commandeth that you go together, and by Saturday next, return your final anſwer, what further ſupply you will add; and that without condition, either directly or indirectly. And if you do not, his majeſty cannot expect a ſupply this way, nor ſuffer you to ſit longer together. And further, his majeſty deſires you to remember, that parliaments are altogether in his power, both in their calling, ſitting, and diſſolution. Therefore, as he finds the fruits of them good, or evil, they are to continue, or not to be."

This ſpeech, partly ſpoke by the king, and partly by the lord keeper, is grounded upon doctrines, which plainly reduce parliaments within the narrow

narrow ſphere, of determining only the mode, and manner of raiſing the ſupplies. For if the parliament were only the king's great council, they had no right to give their opinion in any matter, in which the king did not aſk their advice. This at once, cut off all their power of judging, and debating upon any ſubject, in the adminiſtration of government, in which they thought the people aggrieved, either by the king or his miniſters. And with reſpect to the ſupplies, he was of opinion, that he had at any time, a prerogative right to command what he wanted; as being the only judge of the neceſſity: and if the houſe of commons would not grant him the ſupplies he requeſted, that he might conſtitutionally, by any other means, take them. So that the parliament had no other buſineſs in this matter, than to preſcribe the mode, or manner of levying the money, upon the people.

This doctrine of the king, was ſo heterogenious to the firſt principles of our conſtitution, that it can only be paralleled in the deſpotick times of William the conqueror; from whence he muſt certainly have taken his political creed. Therefore it is no wonder that the parliament, and particularly the commons, differed in their opinions from the king, concerning the authority of their houſe. For they did not conſider themſelves as the general council of William the conqueror, in which there was no elective body of men whatever, but they juſtly conſidered themſelves, as the Saxon wittenagemot, or general aſſembly of the eſtates of the kingdom. They were the great council of the nation, elected by the people at large (and not appointed by the king) to conſult their intereſt only. The parliament of England is the mind of the ſame body, of which the king is the hand; and contains

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all the power, and authority, of the Saxon wittenagemot, under Alfred the great.

Theſe two widely diſſerent opinions, of the king and houſe of commons, ſtrictly adhered to on both ſides, could never be determined but by the ſword. However, we will ſtill continue to purſue the thread of the hiſtory, juſt ſo far as to touch upon ſome of the principal points of conteſt, till the diſpute ripened into an actual war. By which we ſhall be able to obſerve, what ſtrength there was in the conſtitution, to prevent the arbitrary intention of the king; and what means he found in his prerogative, to furniſh himſelf with money, without parliaments; and likewiſe how theſe means failed him, and how he was obliged to return to the conſtitutional mode of ſupply, after all.

The king continued to atack, and the commons to defend their rights and privileges. The articles of impeachment againſt the duke of Buckingham, gave both ſides an opportunity to ſhew their ſpirit. Sir Dudley Diggs, and Sir John Elliot (two members appointed by the commons to manage the impeachment againſt the duke) had ſo warmly maintained the charge, by ſome expreſſions of aggravation which were falſly reported to his majeſty, that he ordered them both into cuſtody, and ſent them to the tower.

This alarming attack upon the privileges of parliament, raiſed ſuch a concourſe of tumultuous conceptions in the minds of the members, as are frequently effected by ſome dangerous ſurprize, and produced a total ſilence in the houſe; which the court-party called a ſullen ſilence. However this ſilence did not laſt long. For they ſoon reſolved to juſtify their members, and demand their releaſement; which they did ſo effectually, that the king, ſeeing no way to ſupport what he had done, was obliged to diſcharge his priſoners. About

this time, the houſe of lords ſeem to have forgot their own dignity and importance; till they were ſtimulated to it by the conduct of the houſe of commons. For the king having before impriſoned Lord Arundel, for the like crime as that of Diggs and Elliot, the lords now obtained the releaſe of their member alſo.

This conduct of the king, inſtead of intimidating the houſe of commons, only ſerved to make them the more inflexibly fixed upon their point, not to grant him one penny, till he had redreſſed their grievances. And he, rather than grant their requeſt, choſe to loſe the money; and, accordingly, diſſolved the parliament on the 15th of June, 1626.

The king, now finding himſelf involved in a great expence by the war, and no ſupply from his parliament, had recourſe to ſuch expedients as he thought he found in his prerogative, to ſupply himſelf with money without the aſſiſtance of parliament. The firſt, was a commiſſion directed to the archbiſhop of York, and others, to compound with popiſh recuſants for all forfeitures. The ſecond, was a grant of his crown-lands, in fee-farm. The third, was a loan from every peer, of a certain ſum of money, for the defence of the kingdom. He alſo attempted the ſame thing upon the city of London, but was refuſed. The fourth, was an impoſition upon ſeveral ports, and maritime counties; to furniſh and ſend out a certain number of ſhips. The fifth, was an order that tonnage and poundage, ſhould be ſtrictly collected. The ſixth, was a tax under the name of a general loan; rated according as every man was aſſeſſed, in the rolls of the laſt ſubſidy.

The methods he made uſe of to enforce theſe impoſitions were various. He appointed venal and corrupt

corrupt judges, who refuſed to adminiſter the law, for the relief of the ſubject; by which all acceſs to the common law of the land, for relief, was barred. Upon ſome he quartered ſoldiers; others he impreſſed for ſoldiers, and ſent them into foreign countries. The gentlemen he ordered into cloſe confinement, and impriſoned them in diſtant counties from home; by the arbitrary authority of the council, who determined all matters relating to the revenue and his prerogative. At the ſame time he ordered the lord lieutenants of the counties, to imbody the militia; to keep down any riſings, or inſurrections that might happen upon theſe illegal proceedings. To theſe we may add the kind aſſiſtance of the clergy. One of them ſaid, "That the king was not bound to obſerve the laws of the realm; that he had a right, by his royal will and command, to impoſe taxes without the common conſent of parliament; and that the ſubjects were bound to pay thoſe taxes, upon pain of eternal damnation."

Notwithſtanding this formidable apparatus, the king could not bring his matters to bear. The people would not pay without actual force; which was almoſt impoſſible to be exerciſed upon them all in general. And ſome gentlemen ſuſtained theſe ſhocks with the greateſt firmneſs; and chooſe rather to ſuffer many hardſhips, than ſubmit to ſuch groſs impoſitions. All which cauſed ſuch delays and obſtructions, that the king could not proceed; and therefore was obliged by mere dint of neceſſity, again to ſubmit to the conſtitution, and to call a parliament; which met on the 17th of March, 1628.

The king, in his ſpeech, told them to this effect: That he had called them together to obtain a ſupply only; and that he choſe to have it in the old way, as the beſt, though not the only way. That this

ſupply muſt be neither too little nor too late. That they muſt be quick in their motions, or neceſſity would oblige him to make uſe of other means, which God had put into his hands. And in ſhort, that there was no time to talk about it, but to do it.

The commons being returned to their houſe, began to examine the grievances of the nation; in which ſeveral members diſtinguiſhed themſelves, by a lively and pathetic deſcription of the principles of the court, and the conduct of the adminiſtration. Wherein they ſay: "It is publickly preached in our pulpits, that all we have is the king's, *jure divino*. They have introduced a privy-council, at once raviſhing the ſpheres of ancient government. They impriſon us without bail or bond; and have deſtroyed the root of all property. Who will give ſubſidies, when the king can take what he will, when he will, and from whom he will? O improvident anceſtors! O unwiſe forefathers! to be ſo curious in providing for the quiet poſſeſſion of our lands, and liberties of parliament; and to neglect our perſons and bodies, and to let them die in priſon, and that, *durante bene placito*, remedileſs! if this be law, what do we talk of our liberties, why do we trouble ourſelves with the diſputes of law, franchiſes, or property; what may a man call his, if not liberty?"

After which they came to four reſolutions: Firſt, "That no freeman ought to be impriſoned by command of the king, privy-council, or any other, unleſs ſome lawful cauſe be expreſſed in the warrant of commitment. Secondly, that the writ of *habeas corpus* ſhould not be denied to any priſoner, he praying the ſame. Thirdly, that, no lawful cauſe appearing for his detainer, he ſhould be diſcharged, or admitted to bail, Fourthly, that it is an undoubted right of every freeman, that he have

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an abſolute property in his goods, and eſtate; that no tax, toll, loan, or benevolence, ought to be commanded, or levied by the king, or any of his miniſters, without common conſent by act of parliament."

The commons then unanimouſly voted the king five ſubſidies, and, at the ſame time, reſolved that the ſupply, and grievances, ſhould go hand in hand. For this purpoſe, they began to prepare a liſt of their grievances, which they intended to preſent to the king, by way of petition; but, upon better conſideration, they changed into the well-known BILL OF RIGHTS. Upon the finiſhing of which, the commons were ſo intent, that they would hear of no other buſineſs till that was completed; and upon this they fixed themſelves as upon a rock.

Thus, with the Bill of Rights in one hand, and the ſupply in the other, they ſtood firm againſt all artifice, perſuaſions, threatenings, and promiſes, both of the king, court-party, and houſe of lords, who would gladly have perſuaded them to have introduced ſome ſaving clauſe; but were never able to move them from the ground they ſtood upon. The king, ſeeing no poſſible way to avoid this blow, reſolved at laſt to paſs the bill. And, accordingly, on the 7th of June 1628, he came to the houſe of lords, and gave a full and ſatisfactory anſwer to the Bill of Rights, in full parliament. And now the commons, on their part, gave him the ſupply they had already voted.

Having finiſhed this matter, to their liking, they reſolved to puniſh the duke of Buckingham, and ſome others, who were the acting inſtruments in the late illegal tranſactions. In which buſineſs they had proceeded to ſome length, when the king ſuddenly came to the houſe of lords, and put an end to their ſeſſions, by prorogation. It was in the

receſs of this parliament, that the lucky hand of John Felton gave the duke of Buckingham a blow, that relieved the houſe of commons from any further trouble about him.

The parliament met again, on the 10th of January, 1629; and immediately took into conſideration the complaints of ſome merchants whoſe goods had been ſeized; and who afterwards had been fined in the ſtar-chamber, for refuſing to pay tonnage, and poundage, being contrary to law, and not granted by act of parliament, and in expreſs contradiction to the Bill of Rights. This created a diſpute, between the king and houſe of commons, which ended in the diſſolution of the parliament: after having firſt kept the ſpeaker in the chair, by violence, which occaſioned great confuſion, tumult, and blows, till Sir John Elliot drew up a proteſt, wherein, among other things, it is ſaid, "That whoever ſhall adviſe the taking of tonnage, and poundage, not being granted by parliament, or that ſhall be an actor, or inſtrument therein, ſhall be deemed a capital enemy to the kingdom and commonwealth."

The next day, after the diſſolution of the parliament, warrants were iſſued out of the council-chamber, for apprehending nine of the leading members, and three of them were ſent priſoners to the tower; and afterwards condemned in the king's bench, to be impriſoned during the king's pleaſure, and ſeverely fined. After this, the king reſolved to call no more parliaments, which he always hated, and uſed to call them a many headed monſter; and never thought himſelf ſafe ſo long as they were ſitting. However he had one true opinion of them, though oddly expreſſed; he ſaid, "They were of the nature of cats, that always grow curſed, with keeping."

But

But to return: the king being reſolved to call no more parliaments, was, therefore, obliged to provide ſome other means of ſupply. Lord Clarendon ſays, many of theſe were unjuſt, many ridiculous, many ſcandalous, and all very griveous. But his chief dependance, for a regular ſupply, was a tax upon all his ſubjects, under the name of ſhip-money. The great obſtruction to the execution of his deſign, was the parliament, and the law. The firſt he had put out of his way, by reſolving to call no more; and now the laſt was to be tried upon the point of ſhip-money. And, therefore, to juſtify his pretenſions, he put a caſe, merely within the verge of a poſſibility; grounded upon his duty as king, and guardian of the realm; "That as he was to take care of the commonwealth, under all points of neceſſity, whether he himſelf was not the ſole judge of that neceſſity; and when, and how this danger was to be prevented, and avoided?"

If ſuch a neceſſity as this could ever have been pleaded, in this kingdom, with any appearance of juſtice, it was at the time of the invaſion, by the Danes in the reign of Alfred the great, which was this: Alfred found, by repeated experience, that, when he had marched his army to fight the Danes, in the north, they ran to their ſhips, and ſet ſail for the ſouth; and, in this manner, harraſſed him about to every point of the compaſs, Yet Alfred, under this real neceſſity, did not pretend to tax his ſubjects by virtue of his prerogative; but aſſembled his parliament, and ſhewed them the inconvenience he laboured under, with ſuch a flying enemy; and pointed out the means of redreſs. He adviſed them to grant him a ſupply of money, to fit out a fleet of ſhips, and fight the enemy at ſea; and ſo prevent their landing at all.

But Charles did otherwiſe: He referred his queſtion to his corrupt judges, and obtained an affirmative anſwer, as it was literally ſtated; which he took care to publiſh to the whole kingdom, and to have it recorded, in the courts of law; and to be uſed, as a rule of court, in all cauſes upon this ſubject. At the ſame time he was reſolved to have this pretended right of taxing the ſubject determined, the firſt opportunity, in a court of juſtice. And, accordingly, ordered the famous Mr. Hampden to be proſecuted, in the exchequer; for refuſing to pay twenty-ſhillings, which he was charged with, in the rate for ſhip-money. Mr. Hampden moſt nobly ſtood the conteſt with the king, and brought this great cauſe to a hearing, before all the judges of the realm, who were ſummoned, for the purpoſe of ſupporting their opinion upon this trial; which, after many days hearing, was determined in favour of the king.

Thus the king removed out of his way, for the preſent, the two great obſtructions to arbitrary power, that is, the parliament, and the law of the land; which laid open the treaſure of the kingdom, to his will. We may here again obſerve, the neceſſity of eſtabliſhing ſome power, in the ſtate, that is able to aſſemble the parliament, without the king's conſent; which, upon this occaſion, would have ſaved the life of the king, the conſtitution of the country, and prevented all thoſe calamities incident to a civil war.

King Charles had before told his parliament, that he had it in his power to ſupply himſelf with money, without their aſſiſtance; that their ſitting, or not ſittting was at his option, and ſhould be determined agreeable to their behaviour. And, as he did not like their conduct, he actually put his threats in execution, for twelve years; and had the Scotch been as tame as the Engliſh, for aught that appears

appears, he might have continued them as long as he lived. For after he had diſſolved his parliament, and appointed corrupt judges, who refuſed to adminiſter the law for relief of the ſubject, in all matters that concerned the power, and revenue of the crown, there was no power, in the ſtate, able to contradict his will. Here I ſhall leave him, to purſue his arbitrary meaſures, till a new ſcene opened, about the year 1640; that obliged him once more to call his parliament.

The king, having thus eſtabliſhed an arbitrary power, and made himſelf maſter of the lives, and fortunes of his Engliſh ſubjects, wanted to extend his tyranny over the conſciences of his people in Scotland; and regulate their mode of faith, and the ceremonial practice of their church, agreable to his own. But they refuſed his dictates, and took up arms in their own defence.

Then it was that he found, what I would have all tyrants find, that the people would not contribute to enſlave one another, at the command of the king. And were this always the caſe, there would ſoon be an end of all tyranny. For the Engliſh would not fight the Scotch, nor the Scotch the Engliſh; ſo that the king made but a ridiculous figure, amongſt his loving ſubjects. Nay more, the Engliſh rather choſe that the Scotch ſhould march forward, in order to reduce the king to that conſtitutional point of neceſſity which muſt conſtrain him to call a parliament, and oblige him to ſubmit to their redreſs of the grievances of the nation. And, to this point of neceſſity. the king was finally reduced, when he called his parliament, which met on the third day of November, 1640.

Some authors affirm, that no age, or country, ever produced men of greater abilities, than what ſat in this parliament. They might be great men, but not ſo great as thoſe IMMORTAL BARONS, who reſcued

reſcued the conſtitution from the Norman tyranny, and reſtored the elective power to the people; neither was their work a thouſandth part ſo great, important, and difficult. However, they had abilities, equal to their taſk, and had their honeſty been equal to their abilities, they would have been a bleſſing to their country; but, as it was, they proved the greateſt curſe the nation could have met with. Let us ſee then, how the parliament really acted, in this matter; making the conſtitution, the judge, which ought to have been the rule of their action.

When the parliament met, the king, in his ſpeech, told them; "That he was reſolved to put himſelf freely, and clearly, upon the love, and affections of his Engliſh ſubjects." And his future behaviour correſponded with his words, and manifeſted a conviction of the errors of his education. The commons being returned to their houſe, many members preſented petitions of grievances, which they had brought with them, from their conſtituents; beſides many others, that were daily preſented from public bodies of men, as well as from private perſons: in which they found ample matter of complaint, againſt the acting inſtruments of the king, and the principal men in adminiſtration. Theſe men were the firſt objects of their reſentment, whom they were reſolved to prevent from doing any ſurther miſchief; and proceeded againſt them in ſuch a manner, as ſoon ſtruck a terror into the boldeſt.

However, they firſt cleanſed, their own houſe, from all ſuch members as had been concerned in illegal monopolies, and injurious contracts; and then impeached the earl of Strafford, of high treaſon; upon which he was ſent to the tower. Sir Francis Windebank, ſecretary of ſtate, finding no ſafety for

for himſelf, made his eſcape into France. From the ſtate they proceeded to the church, and impeached Laud, archbiſhop of Canterbury, of high treaſon; upon which he was ſent to the tower. They obliged Wren, biſhop of Ely, to give ten thouſand pounds bail for his appearance. From the church they went to the law, and voted lord Finch, keeper of the great ſeal, a traitor to his country, upon which he fled into Holland; and they obliged four of the judges, to give bail for their appearance.

Beſides theſe particular men, who they intended to puniſh, they paſſed many general votes of terror, which affected all the king's ſervants, from the higheſt to the loweſt, and involved many others in the like guilt. That is, the houſe voted ſuch, or ſuch a thing illegal, and the adviſers, and actors therein delinquents, who ought to be puniſhed. So that few men, who had any connexion at all with the court, either directly or indirectly, and eſpecially ſuch as had been concerned in collecting the king's illegal revenues, and executing the decrees, and orders of the ſtar-chamber-court, but were continually in danger, and ſubject to their vengeance.

Having thus ordered matters reſpecting the acting inſtruments, they went upon the grievances themſelves; which they collected from the petitions, preſented to them from ſeveral parts of the kingdom. Whatever they found a matter of complaint they ordered in a bill to aboliſh it, if neceſſary; or blaſted it by a ſingle vote of the houſe, which in many caſes was as effectual as a bill. For few men would ſubject themſelves to a future correction, for a diſobedience to their votes. It would be almoſt incredible to imagine with what diſpatch and eaſe they proceeded, had we not been informed, that the commons divided themſelves into forty committee,

mittees, to prepare theſe matters for the houſe. So that the houſe had little more to do, than to confirm the reports of the committees, as they came before them.

We muſt obſerve that all theſe regulations, during this time, met with little or no obſtruction from the king, or his party. However, the king came to the houſe on the 25th of January, and in a ſpeech delivered his reformed ſentiments. He told his parliament, That he was very willing to concur with them in the reformation of all things, both in church and ſtate, and to eſtabliſh things upon the ſame foundation they were in, in the days of queen Elizabeth; by which he renounced all the doctrines of his father. But that he differed from them, in two points.

In the triennial bill he objected to the mode only; but as to the matter, of having frequent parliaments, he much approved of. The other point of objection reſpected the biſhops; in this he was willing to reſtrain them from all temporal authority, except their ſeats in parliament, which he could not conſent to take away; and yet gave no other reaſon, but their having had that privilege ever ſince the conqueſt, or before. To this laſt objection, the commons anſwered very juſtly, to this effect. That time and uſage could not eſtabliſh a grievance, that had ſprung from encroachment, to the manifeſt injury of the ſtate, and people of England. That it was their duty as law-makers, to remove from parliament, a body of men who had, conſtitutionally, no right there; and who had invariably, directed their whole influence, againſt every principle of civil, and religious liberty; and were now particularly dangerous to the ſtate.

It is undoubtedly the moſt abſurd and pernicious principle, that ever was received into any ſociety of men, to permit the clergy, of any denomination,

to

to have the leaſt diſtant ſhare, or influence, upon the legiſlative authority of any nation. And had the motives of the houſe of commons, for excluding the biſhops from the houſe of lords, been as good as their motion, they would have done this kingdom a moſt eſſential piece of ſervice; but their intent was only to pull down one nuiſance, in order to eſtabliſh another almoſt as bad. Their buſineſs as law-makers, was to protect every man, in his right of private judgment in point of religion; and not ſuffer any ſet of men to dictate to others, where it is impoſſible the ſtate can be concerned, in a matter that merely ſubſiſts between God and a man's own ſoul.

The houſe of commons, not finding themſelves ſtrong enough at this time, deſiſted. But ſhortly after they deſtroyed the epiſcopal hierarchy, root and branch; and eſtabliſhed preſbyterianiſm, upon the ruins of the church. But inſtead of this, had they taken away the church-lands, and applied them to the ſervice of the ſtate, they would have taken away the true bone of contention. Had they deſtroyed all eccleſiaſtical power, they had deſtroyed an evil, in the ſtate, and abundant matter of vexation. Had they protected all men alike, in their different modes of worſhipping God, they would have taken away all juſt occaſion of offence, and eſtabliſhed peace amongſt men.

From many circumſtances that appeared upon this occaſion, and in the caſe of the earl of Strafford, it ſeems evident, that the leading men of the houſe of commons, had from this time, taken their reſolution to ſubvert the conſtitution, and change the mode of government of this kingdom, into what they called, a COMMONWEALTH; but in reality, to veſt the power in themſelves, deſtroy the regal authority and enſlave the people. Which will undoubtedly be always the caſe, whenever the houſe

houſe of commons gets an eſtabliſhed footing, as they did, for a long courſe of time.

However, they artfully kept this their deſign from the publick, as much as poſſible, till they had got a power to execute it, which preſented itſelf upon the following occaſion. The king zealouſly defended the earl of Strafford, and the lords joined the king in his defence. By which the commons plainly ſaw, and the voice of the people was united with them, that if they could not bring the authors of their grievances to juſtice, they were doing nothing. Upon this account they raiſed ſuch a clamour, riot, and diſturbance, over the whole kingdom, and particularly in the city of London, that the old and timorous members, and thoſe they pointed out as obnoxious, durſt not attend their duty in either houſe. And even the king, did not think himſelf ſafe in his own palace.

Nothing can ſhew more clearly, to what a heighth they had raiſed the ſpirit of apprehenſion than that, in a few days, they were able to get a petition againſt the earl, ſigned by forty thouſand people, in the city of London; who attended the houſe of lords in multitudes, to preſent it, to pray that the lords would paſs the bill of attainder againſt him.

In the mean time, the commons induſtriouſly ſpread a report abroad, that it would be impoſſible to redreſs the grievances of the people, or find money to diſcharge the Scotch army, ſo long as the king had it in his power to diſſolve the parliament; which they much apprehended he would do. This was properly bringing the matter to the point they wanted. And, therefore, when they ſaw the ſpirit of apprehenſion was ripe for their purpoſe, a Lancaſhire member moved in the houſe, at a late hour, that if the king would paſs a bill, that the

parliament

parliament ſhould not be diſſolved, without the conſent of both houſes, he could procure ſix hundred and fifty thouſand pounds, for the diſcharge of the money due to the Scotch, till they could find ſome other means to provide for it. The very next day, the bill was hurried through the houſe three times, and was perfected, and ſent up to the lords, the very ſame day for their concurrence; and in four days after, this fatal bill received the royal aſſent.

This memorable event will be marked in our future annals, like that, of Marius and Sylla, in the Roman hiſtory, who taught future adventurers the way to deſtroy the Roman conſtitution, and make ſlaves of the people. For it is the firſt inſtance in the Engliſh hiſtory, wherein the houſe of commons impiouſly violated the rights of the people, and gained an eſtabliſhment, by act of parliament, by conſenting to a law for their own duration: by which the elective power of the people was deſtroyed, and our free ſtate converted into a fixed and ſtanding ariſtocracy.

There are times when we ſee a whole nation ſeem to run mad, and rejoice in their own deſtruction. This was the caſe at that time, for the people rejoiced over this enſlaving act, and deemed it a conqueſt over the king. England has been mad ſeveral times, ſince this period, but this was the greateſt fit of frenzy ſhe ever had. It is at ſuch times of diſorder as theſe, that artful politicians often convert the miſtaken zeal of the people to their own advantage, and the people's ruin. Which was preciſely the caſe of the leading members of this houſe in obtaining that unconſtitutional act.

The houſe of commons, or the elective body in our parliaments, is in its own nature unfixed, changeable, and for ever in motion; and this moveable principle in our conſtitution, is its ſtrength

and

and ſecurity. It is this that hath kept it alive, and preſerved it for many ages; nay, in ſhort, it is liberty itſelf. A little attention will ſhow us, that the quick and lively exerciſe of the diſſolving prerogative of the king, and the elective power of the people, form a circulation, which is as much neceſſary to the well being of the ſtate, as the action and re-action, of the ſolids and fluids, are neceſſary for the health of the animal œconomy. For if they be reſtrained from action, or ſuffered to ſtagnate, they will produce all manner of diſorder, danger, and death. By that fatal act, which fixed the duration of parliament, the firſt principles of our conſtitution were deſtroyed, changed, and ſubverted; the legiſlative authority became fixed by law, and conſequently the people became ſlaves, by law.

There are three conſtitutional checks which defend one power in the ſtate, from encroaching upon the rights and privileges of another. By this law, two out of the three, were loſt. By this law, the king could not diſſolve his parliament; and therefore he could not defend himſelf againſt the encroachments of the two houſes, upon his conſtitutional executive authority. By this law, the people loſt their elective power; for as the king could not diſſolve his parliament, ſo the people could not elect a new one; conſequently they had loſt, their conſtitutional check, againſt the treachery of their own members.

There is no chief magiſtrate, no political body of men, call them by what name you pleaſe, whether the many, or the few, let them be ever ſo wiſe, ever ſo virtuous, ever ſo moderate, or high in your expectation, at the entrance upon their office; but what will (if you once make them powerful, and fix them above your own control) moſt certainly

certainly degenerate into tyrants, and make you ſlaves. This doctrine was amply verified, in the conduct of this parliament. However, at the time of paſſing the act, it was doubtful, whether they intended to make uſe of their power to eſtabliſh the conſtitution upon a ſolid foundation, or to deſtroy it altogether. But their intention became aftewards very manifeſt, when they delivered their remonſtrance to the king, dated December 1ſt, 1641.

In this remonſtrance, they declare, " That they had ſecured the property of the ſubject to himſelf, by reducing the pretended prerogative of the king within the limits of law, and prevented for the future his taxing the ſubject, or charging their eſtates without the conſent of parliament. That they had ſecured the liberty of the ſubject, by aboliſhing all the arbitrary courts of law, and reducing others within their due bounds. That they had made an example of evil counſellors, and inſtruments of the paſt grievances; by which no man for the future, durſt obey the king's illegal commands. That they had repealed many obſolete laws, which had been a cover for many grievances. They acknowledge the king, during this parliament, had paſt more good laws, for the advantage of the ſubject, than had received the royal aſſent for many ages. And as a matter above all the reſt, that the king had paſſed an act for triennial parliaments, which, as they themſelves ſay, afforded a perpetual ſpring of remedies for the future."

If then they had rectified what was amiſs, in times paſt, and provided a remedy, for the time to come, what had they more to do? Nothing, but to conſent to their own diſſolution, and renounce that unconſtitutional power they had become poſſeſſed of, and leave the ſtate to that perpetual

ſpring of remedies, which they had provided for the future.

Had they done this, they had done like honeſt men. But a diſſolution of their power was far from their thoughts. The laſt mentioned remonſtrance can be conſidered as nothing leſs than a cauſe of further quarrel, in which they might ſeek a pretence to continue their authority. For they had now drunk deep of that diabolical ſpring, which intoxicates all mankind, and renders their thirſt of power inſatiable. They had obtained a right, by law, to their ſeats in parliament, during their own pleaſure; and it is very evident they never pleaſed to riſe, till they were forced out of the houſe, by a file of muſketeers, under the command of Oliver Cromwell.

To this infernal principle, the thirſt of power, I muſt aſcribe that unrelenting vengeance, with which the parliament purſued the king, through the whole courſe of a moſt bloody war; becauſe he was the greateſt obſtruction to the eſtabliſhment of their intended commonwealth, and conſequently to the eſtabliſhment of their intended power, and tyranny, over their own conſtituents. We ſhall not ſtay to make any remarks upon the war; but only obſerve, that the parliament never gave the king one moment's reſpite, till they brought his head to the block, and made way, through his blood, to eſtabliſh their own ſovereign authority.

With the king fell the houſe of lords, which, indeed, had been but too inſtrumental in pulling down the REGAL PART of our government, and thus deſtroying that juſt diviſion of power, which conſtitutes the beauty and ſtrength of our conſtitution. Thus all degrees of power, in the ſtate, were at once ſwallowed up in the houſe of commons: and the people left to bewail the dreadful conſequence of their own credulity, with their lives liberty,

liberty, and property, at the mercy of theſe traitors to their truſt. The people were now more ſlaves, to their own repreſentatives, than they had ever been to the king; for WHERE ANNUAL ELECTION ENDS, THERE SLAVERY BEGINS, whatever that power be that bars ſuch election.

The ſpirit of our Engliſh conſtitutional liberty is founded upon the annual exerciſe of our elective rights; and not in having, a fixed repreſentative body of men, in parliament. The houſe of commons were no longer the repreſentatives of the people, than they were conſtitutionally ſo, that is, for one year; agreeable to the ancient law of the land, and confirmed by a ſtatute of Edward the third, which declares, "that parliaments ſhould be holden every year, or oftener, if need be, for the redreſs of divers miſchiefs, and grievances that daily happen." They were not the more the repreſentatives of the people, though they firſt elected them, becauſe they afterwards continued themſelves, by their own authority, during their pleaſure.

Men of cool reflection, upon theſe hiſtorical events, (when they had ſeen, in this great ſtruggle for power between the king and parliament, every nerve of the conſtitution exerted, upon one ſide, or the other, and every conſtitutional right claimed, on both ſides, which might contribute to their ſucceſs) juſtly concluded, THAT ENGLAND COULD NEVER BE BROUGHT INTO SLAVERY, BUT BY PARLIAMENTS THEMSELVES.

It is very evident that the great barrier, of our conſtitutional liberty, conſiſts in an inſeparable union of intereſts, between the houſe of commons, and the people; which can only ſubſiſt by annual election. And that Charles the firſt, by endeavouring to govern without parliaments, had only cemented this union, and made this barrier impe-

netrable againſt himſelf; as it had been againſt every king, who had attempted to deſtroy it, ſince Henry the third.

But when the houſe of commons came to divide from the people, and ſet up a ſeparate intereſt for themſelves, it was but too evident, they could impoſe all manner of inſult, and outrage, as well as any ſingle-handed tyrant whatever. They had no more regard to the ancient form of government, to the rights, privileges, and franchiſes of the people, than William the conqueror, or any other tyrant, ſince his time. Indeed, after they durſt ſo impiouſly, and treacherouſly deſtroy the elective power of the people, by conſenting to a law for their own duration, it is no wonder they ſhould MURDER THE KING, DESTROY THE HOUSE OF LORDS, AND MAKE SLAVES OF THE WHOLE REALM.

Charles, claimed his right of tyranny, "*ex jure divino*," and the commons, claimed their right of tyranny, from "*vox populi, vox dei*:" ſo that each ſide, had ſome pretenſions, to a divine origin.

SECT. II.

To the revolution.

WE ſhall now proceed to the reign of king Charles the ſecond, who, as well as other men, had ſufficient reaſon to be convinced, by the tranſactions of the late war, that the Engliſh liberty could not be deſtroyed, but by parliaments themſelves.

The late conduct of the houſe of commons, had furniſhed him with both a principle, and a precedent, by which this might be done; which was, by reſtraining the elective power of the people from

from action, to diſtant periods of time; which would render it both impotent againſt himſelf, and uſeleſs to the people; and yet keep up the outward form, and face of the conſtitution. Charles had ſeen the repreſentatives of the people, conſent to a law, for their own continuance, during their pleaſure; which had deſtroyed, the elective power of the people, for almoſt twenty years.

From this time our ſucceeding kings, no longer directed their artillery againſt the houſe of commons, but againſt the elective power itſelf, in the hands of the people at large; ſince they found, by experience, that the houſe of commons was willing to make a ſeparate intereſt, from their conſtituents. King Charles the ſecond, was the firſt that tried this principle, by the aſſiſtance of his prerogative, in the manner we are now going to relate.

It is remarked by hiſtorians, that Charles was of opinion, that few men acted upon a principle of public virtue, or a ſenſe of honour, honeſty, or moral obligation, but that the generality of mankind acted wholly from a principle of intereſt; and what he had ſeen either abroad, or at home, had not contributed to alter that opinion. It was an eaſy concluſion, from this principle, that if he could divide the intereſt of the houſe of commons, from the intereſt of the people, he ſhould divide their ſtrength; and then, by uniting the houſe of commons in the intereſt of the crown, he ſhould have the ſupport of the commons and leave the people naked, and defenceleſs, with their lives, and fortunes at his mercy.

And, therefore, Charles was no ſooner ſettled upon the throne of his anceſtors, by the convention of the ſtates, which was a motly aſſembly of all parties then in being, and in whom he could not confide, than he reſolved to call a parliament, by his own writ, that he might have the elections more

under his own management. By this means he procured a parliament to his liking, which, afterwards, obtained the name of THE PENSIONED PARLIAMENT; which, he continued ſitting, by prorogation from time to time, for eighteen years; becauſe, having once got a corrupt houſe of commons, which was the thing he wanted, he would not diſſolve them.

With theſe he began to execute his new mode of tyranny, by a direct contrary courſe to his father, or any of his progenitors. And that was, as I juſt now ſaid, by dividing, the intereſt of the majority of the houſe of commons, from the people, and ſuffering them to ſhare with him, the plunder of the nation. Before this time (the rebel parliament excepted) a ſtanding houſe of commons, was as much a ſtranger to this country and conſtitution, as a ſtanding army; but the king having obtained the firſt, ſoon made way for the ſecond, for it is obſervable that a ſtanding army was introduced at this period.

Let it ever be remembered, and ſeriouſly conſidered, that every county, or borough, when they chooſe their members, put into their hands no leſs than the keys of all their treaſure; and not all their treaſure only, but the treaſure of every man in the Britiſh empire; out of which they can take what they will, how they will, and when they will, and, as ſuch, are a very deſirable partnerſhip for a king.

Charles governed this kingdom in the ſame arbitrary manner, with this elective body of men, as William the conqueror did without them. For as the people had, in both caſes, loſt the exerciſe of their annual power of election, with that they had loſt the remedy for all their grievances. And under this mode of things, may be obſerved, all the marks of tyranny that can be found under the deſpotic government of one man. The laws were no longer any protection to the innocent; judgment and juſtice

tice were directed by court policy; ſeverity and cruelty took the place of mercy and moderation; ſlitting of noſes, cutting of ears, whipping, pilloring, branding, fining, impriſoning, hanging, and beheading, were the conſtant lot of thoſe who had virtue enough to ſpeak, write, or act in defence of conſtitutional liberty.

And, ſo far was the houſe of commons from relieving the people under this dreadful dilemma, that they contributed all in their power, to prevent even their cries and prayers from either approaching the throne, or themſelves. They paſſed a law, by which no man durſt aſk his neighbour to join him in a petition, for relief, to the king, or either houſe of parliament. It was a melancholy conſideration, to ſee the people refuſed the benefit of prayers and tears, for relief againſt their own infamous deputies.

But ſuch, indeed, was the ſtate of the Engliſh people, for fifty years together, under the various powers that had ſubſiſted during that time, when they were reſtrained from the exerciſe of their elective rights: that is, for twelve years, under the tyranny of Charles the firſt; for twenty years, under the tyranny of the rebel parliament; and eighteen, under the tyranny of king Charles the ſecond and his penſioned parliament. There were only two regular elections for fifty years; one in the year 1640, which produced the rebel parliament, and one in the year 1660, which produced the penſioned parliament of Charles the ſecond.

It might have been expected at the revolution, after the Engliſh had ſeen by what means their elective power had been evaded, that they would have provided a remedy equal to the evil. What had paſſed was certainly ſufficient to convince them that they could have no dependence, either upon the king, or upon the houſe of commons, for the due adminiſtration of their elective power; and as go-

vernment found out new means to evade it, it was the indiſpenſable duty of the people to have eſtabliſhed new means to preſerve it.

After the reſtoration of the conſtitution in the reign of Henry the third, it became the general practice to elect a new houſe of commons every year, or at leaſt every time the king wanted a new ſupply; which was agreeable to the Engliſhman's boaſted right of diſpoſing of his own money to the ſtate. And this continued down, with very few variations, to the family of the Stuarts, who confounded every principle and cuſtom in the conſtitution and mode of government.

James the ſecond inherited all the diabolical ſpirit of his whole houſe; was a perſon that no experience could teach wiſdom, laws make honeſt, nor oaths bind; and therefore the whole nation united, as one man, to exclude him, and his deteſted race, from the crown of theſe realms for ever.

CHAPTER VII.

From the revolution to George the ſecond, with ſome remarks.

WE are now come to that epocha of the Engliſh hiſtory, commonly called the REVOLUTION; in which the Engliſh people were made to believe, that their laws, liberty, and religion were going to be eſtabliſhed upon the moſt conſtitutional, firm, and ſtable foundation, under the immortal king William the third, of glorious memory.

Before the parliament, or rather the convention, tendered the crown to William, they made a declaration, containing thirteen articles, of ſome of the rights and liberties of the people, which had been violated in the three late reigns. In the thirteenth

of

of which they declare, " That for the redreſs of grievances, and for the amending, ſtrengthening, and preſerving of the laws, parliaments ought to be held frequently.

But what they intended poſterity ſhould underſtand by the equivocal word frequently, is hard to determine. It ſeems to inſinuate ſomething, in favour of the elective power of the people, but determines nothing of certainty in that reſpect. Had they declared that parliaments ſhould be held annually, and a new houſe of commons elected every year, they would have then plainly declared for the conſtitution, and the elective power of the people. This would have eſtabliſhed it, by a publick declaration of the two eſtates, then in being, upon a conſtitutional ground, which would have put it out of the power of their intended king, or any future parliament to have reſtrained, or ſubverted it, either by the prerogative of the crown, or acts of parliament.

But it appears very evident that, upon this critical occaſion, the convention did not do their duty to the people (by acting upon the principles of the rebel parliament) and meant to uſurp a power, in the legiſlative authority, to determine how often the people ſhould exerciſe their elective rights. Accordingly we find they ſoon after made an act by which our kings were obliged to call and diſſolve their parliaments, once in three years at leaſt. Thus they introduced the practice of the rebel parliament as a principle of the conſtitution; and uſurped a power in themſelves of reſtraining the elective power of the people, by acts of parliament. Hence we ſhall find that, having once introduced the principle, innovations ſucceeded one another as faſt as time and opportunity would permit. And accordingly, in the following reign of queen Ann, the parliament made a law for a landed qualification

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tion of the members of the houſe of commons, by which it was enacted, That every member, for a county, ſhould be poſſeſſed of an eſtate in land, of ſix hundred pounds a year; and every member for a borough, ſhould have an eſtate in land, of three hundred pounds a year.

The principles upon which theſe two laws are founded, have, in their operation, converted our free conſtitution, and mode of government, into a down right rank ariſtocracy of the rich in land. Our ancient parliaments were compoſed of THE WISE MEN OF ENGLAND, but, ſince the enacting theſe two laws, they have been changed into THE RICH MEN OF ENGLAND; which have made a vaſt difference in the ſpirit of the laws that proceed from thence. But as I intend, hereafter, to enlarge upon this ſubject, I ſhall only, for the preſent, obſerve upon what a ſlippery foundation the firſt principle of the conſtitution now ſtands, upon this REVOLUTIONAL ground; where the parliament have veſted themſelves with a power, to reſtrain the annual exerciſe of the elective power of the people, by acts of parliament.

The people of England received their elective rights, from the law of nature, and the conſtitution, TWELVE HUNDRED YEARS before William the third favoured us with this Dutch amendment. But from his time the houſe of commons began to act as principals, and to forget their relation to their conſtituents, as agents, and deputies, from a ſtate formed upon a delegated power; and diſpoſed of the elective rights of the people, as they found it convenient for themſelves. This was no leſs than admitting the principles of the rebel parliament, in reſtraining the elective power of the people, by acts of parliament, as the principles of the conſtitution. Though ſuch acts had never been heard of, in the whole courſe of the Engliſh hiſtory, before that period,

riod, and had then reduced the people to ſlavery for twenty years. Beſides, it was a ſecond precedent where the houſe of commons had taken upon themſelves, to conſent to a law to reſtrain the power of their conſtituents.

This was the more inexcuſable, as at that time the niceſt care ſhould have been taken, to have preſerved the firſt principle of the conſtitution, from violence, or the treachery of the repreſentatives of the people who had, twice before, ſo baſely betrayed their truſt, that a remedy, for ſhort parliaments, placed in the hands of the houſe of commons, was very evidently no remedy at all. For we find, in the reign of George the firſt, the parliament repealed this TRIENNIAL law, and made another, commonly called the SEPTENNIAL law, by which they gave themſelves a duration of ſeven years. And, in the reign of George the ſecond, they made a conditional law, which might have given them a duration for TWELVE years. And notwithſtanding this law never took place, yet it is a fourth precedent, in the Engliſh hiſtory, and a third ſince the revolution, wherein the houſe of commons hath thought proper, to reſtrain the elective power of the people, by acts of parliament. To which we muſt add, the qualifying law (which makes a fourth precedent ſince the revolution) whereby the elective power of the people, is directed to the object they ſhall chooſe, which is now confined to the rich in land.

Thus the houſe of commons, from being deputies in a ſtate, formed upon the common rights of mankind, are now become principals; and controul the creative power from whence they derive their authority. Which is acting upon the very ſame principle, by which the ancient Romans loſt their liberty; when the conſuls, who were, in their conſtitution, annually elective, continued themſelves in

power,

power, by their own authority; and conſequently made the people ſlaves. The change that is made in our conſtitution by theſe laws and the principles and operations that attend them, have totally changed the temper and ſpirit of our government, which I apprehend, are the true cauſe of the general diſcontent, which hath been encreaſing upon us for a number of years, and now diſtracts the whole Britiſh empire.

We have now had ſome years experience, in the operation of the qualification law, of queen Ann, and the ſeptennial law of George the firſt; which two laws have brought upon us many publick calamities. The firſt I ſhall take notice of, is that ariſtocratical law, made in the reign of queen Ann, by which all free elections, for members to ſerve in parliament, are deſtroyed; the electors being reſtrained, by this law, in their choice of repreſentatives, to the rich in land only.

Our government is founded upon the common rights of mankind, in which wiſdom, and honeſty were the only qualifications neceſſary for a member of parliament, and ſo it continued down for twelve hundred years. This inſpired our laws, with an equal ſpirit, in favour of all men. But ſince this law moved our government from this ground, and made it a government founded upon riches, and theſe riches to be in land, it hath veſted all our legiſlative authority in one claſs of men, the great freeholders; which has eſtabliſhed an ariſtocracy, now become dangerous, both to the crown and the people.

Our conſtitution knows no ſuch partial law as this; every man born in England, that was an elector had a right to give his vote where he pleaſed; and every Engliſhman was eligible, to ſerve in parliament, that his conſtituents thought properly qualified. The electors of our towns, and boroughs,

roughs, we may conſtitutionally, conſider as men without land; becauſe they do not derive their right of election by any right they have in the land, but as being Engliſhmen, and members, or inhabitants of ſome town, or borough. And, therefore, their duty, as electors, was to chooſe ſome eminent men, out of their own body, whoſe intereſt was the ſame, as the men without land. And, in like manner, the freeholders, in every county, uſed to elect ſome eminent men, out of their body, whoſe intereſt was the ſame as the men with land.

Thus we ſee our conſtitution hath drawn a clear line, between the men WITH LAND and the men WITHOUT LAND; or, in other words, between the inhabitants of the towns, and the inhabitants of the rural part of the kingdom. And hath, accordingly, provided each with diſtinct powers of election, that they may chooſe proper men, to repreſent themſelves in parliament. But now, by this law, all our boroughs, and towns corporate, are obliged to chooſe none but rich freeholders; ſo that, when they meet in the houſe of commons, they are all men of one intereſt.

From this time, therefore, many of our ſubſequent laws, and eſpecially thoſe reſpecting property, trade, and taxation, have become partial laws; and have been made to operate, in a manner, for the ſole advantage of the rich in land. All laws will be partial, that are made by only one part of the people; or, in other words, by one claſs of the people. From this ſelfiſh principle proceeds the partial, arbitrary, and tyrannical ſpirit of our game-laws; ſo that now no man can either fiſh, or ſhoot, without having a qualification in land. Indeed all this tribe of laws are ſo pitifully partial, mean, poor, and wretched, that they would diſgrace the petty tyrants of Barbary.

They

They have engroſſed, within a line of their own drawing, all hares, wild fowl, and fiſh, that are natives of this kingdom; which, in their own nature, being wild, and wandering, and not ſubject to reſtraint, are, therefore, the natural right of the firſt man that can catch them. But theſe laws, have not only ſubverted this natural right of mankind, but eſtabliſhed, their own with a bitterneſs little leſs than cruelty; for they are guarded, and defended with the ſame ſelfiſh ſpirit, that the moſt niggardly miſer would guard his treaſure. So that a poor man cannot entertain his longing wife, with a gudgeon, of his own catching, without being guilty of felony; or kill a partridge, without fine and impriſonment. Nay more than this, no man dare touch one of theſe prohibited bodies, even when they are dead, under a penalty of five pounds, without being firſt franked with the hand of one of theſe qualified engroſſers. In ſhort, they have defended theſe laws, with the ſame care, that I hope to ſee the houſe of commons defended, from place-men, penſioners, and contractors; that is, by all the locks, bolts, and bars, that the ingenuity of man can contrive or invent.

From the ſame ſelfiſh principle proceeds all our taxes upon the neceſſaries of life, which ſo much diſtreſs the poor; ſuch as malt, hops, beer, ſoap, candles, leather, and the like; and, indeed, upon almoſt every thing that they can eat, drink, or wear; and all to ſave the land: which has raiſed the price of the neceſſaries of life to ſuch a degree, that the induſtrious poor can hardly get bread to eat. And when the land-tax is nominally at four ſhillings in the pound, according to the beſt information I am able to meet with, it does not, upon an average throughout the kingdom, in reality, pay nine-pence. From the ſame cauſe ariſes the extraordinary advance of land, which is chiefly artificial, and proceeds

ceeds from the favour it receives from the ſelfiſh ſpirit, introduced into our government by this law. Theſe are the firſt law-makers that ever appeared in the known world, that were ſo notoriouſly partial to their own intereſt, as to give five ſhillings a quarter, or one-eighth of its value, out of the public money, for the exportation of bread-corn, out of their own country, the place of its growth; which has encreaſed their eſtates to double their former value, and raiſed the price of all proviſions, that are the produce of the land, to ſuch an extravagant degree, that the poor-rate is now become almoſt equal to the land-tax.

The value of lands, like commodities in trade, will riſe and fall in proportion to the advantage that can be made of them; and, therefore, their value will be in proportion to the value of their produce, ſo that nothing more is neceſſary to increaſe the value of the produce, than to increaſe the demand and conſumption of it, and the value of land will riſe of courſe. The price of proviſions, which are the produce of the land, has, at all times, or at leaſt for a long time, been greater in England, than in any one country in Europe; and conſequently our poor have always eat their bread at a higher price than any other nation. And, therefore, our corn could never find a market abroad; becauſe it would fetch a better price at home. This being the ſtate of things before this act took place, it would have been nothing more than common policy, to have reduced the price of proviſions, that our manufacturers might work upon the ſame terms as other nations. In ſome countries, like Poland, where there is a large quantity of land and few inhabitants, and few or no manufactories, the corn may be exported with advantage to the people; when that is the caſe in England (which God forbid) it may be exported, but not till then.

But

But this act of parliament which gives a bounty (properly ſo called) of five ſhillings a quarter upon the exportation of wheat, has entirely inverted the order of things, and diſappointed the end for which it was pretended to be made. It has indeed increaſed the growth of corn in this kingdom to a great degree, but it has, at the ſame time, forced the principal part of it abroad, for other nations to eat; by reducing the price upon the exportation ſo much below the price of foreign markets. To illuſtrate this point, let us ſuppoſe the market-price of wheat, in Holland, and the market-price of wheat, in England, to be the ſame; and we will call that price forty ſhillings a quarter. Now the exporter of our corn will receive, from this price, five ſhillings; which is no leſs than one-eighth of the whole value, or twelve and a half per cent. And, therefore, his wheat will now ſtand him in twelve and a half per cent. leſs than the market-price in Holland.

Upon this ground it is ſelf-evident, that, with this advantage, our merchants muſt beat the Dutchman out of all the markets in the world; for the latter can never ſell his wheat at any Italian or foreign market, againſt this Engliſh-bounty, ſo long as there is any wheat in England to ſell. And were it not for the bar which puts a ſtop to the exportation, by a limited price fixed by this act, it would drain the kingdom to the laſt buſhel, and create a perpetual famine in the land. But the Dutch, who are the greateſt dealers in corn of any nation in the world, know how to work this matter to their own advantage, for they engroſs your wheat, and take the bounty to themſelves, and then they can ſell at a par with the Engliſh at any market; or keep it till they have drained your markets dry, and then ſell it to you back again, at any price they pleaſe. And hence it comes to paſs that we have ſuch a conſtant ſcarcity at home, as puts it in the power of the proprietors,

proprietors of the little that is left, to advance the price of it to almoſt what they pleaſe.

The natural conſequence of thus encreaſing the value of proviſions, is the encreaſe of the value of land; which has now advanced the rentals one half, and in many of the eſtates double to what they were before this act was made. And to crown all, this bounty is to be paid out of the national funds, granted for the ſervice of the ſtate; and therefore it is, ultimately, neither more nor leſs, than taxing the people to pay the landlord theſe extravagant rents. Where ſo many people were intereſted, as muſt be in an act of this nature, every thing would be ſaid in its favour that could either divert the attention of the people from the real object, or afford the beſt reaſon for its paſſing. But the only reaſon I have heard, worthy of obſervation in ſupport of this act, is the quantity of money it hath brought into this kingdom. If money indeed be the ſole object of government, and not the welfare of the people, and this money is to be directed into the pockets of any particular ſet of men, it might have ſome weight: but this I did not apprehend to be the end of government, or the intention of any act of parliament.

However, if that be the caſe, there might have been an act which would have anſwered the purpoſe much better. For they might have made a law by which every man, that was not a gentleman, and poſſeſſed of an eſtate in land equal to a qualification for a member in parliament, ſhould have been obliged to eat horſe-beans, peaſe, and potatoes; and that none but themſelves, their wives and children, with their whores, pimps, and paraſites, ſhould have been allowed to eat wheat: Unleſs it was by a ſpecial licence, on paying five pounds a head, firſt had and obtained from any member of parliament, for the time being.

The benefits of ſuch a law as this, would have been many; but I ſhall only inſtance in a few particulars. They would have been, by this means, able to export almoſt all the valuable bread-corn in the kingdom, by which they would have brought, many millions of money into the pockets of the landlord; at the ſame time, it would have raiſed the price of horſe-beans, at home, to the ſame price as wheat is now at. It would have greatly advanced the price of beef, and mutton, as there would have been leſs grazing ground, for breeding and feeding of cattle; which would have made an excellent ſcarcity, and added greatly to the emolument of the landed gentry. And it would have reduced the people to that due ſtate of ſubordination, much wanted in England; and made a proper diſtinction between a gentleman, and a commoner. And, to finiſh all, they ſhould have had this act, and thoſe belonging to the game-laws, in which I include the fiſh-act, bound up together, for the uſe of ſchools; that every boy might have learned his duty, and condition, at the time he learned to read.

The nobles, as obſerved before, exerciſe their legiſlative authority, in perſon, from being great freeholders; and by the partial qualification-law of queen Ann, all the elective power, in the houſe of commons, is alſo veſted in the hands of the great freeholders. From whence it is very evident, that this law has formed an ariſtocracy in our government, compoſed of the great freeholders of the realm. It always did happen, and always will be the conſequence, that where one claſs of men gains an aſcendancy, in the legiſlative authority in any ſtate, they will make uſe of their power, as members of the legiſlative body, to promote their own intereſt, as individuals; and incline the laws to eſtabliſh their power, and intereſt, at the expence of every other man in the ſtate.

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The ſecond law I propoſed to enlarge upon, was the ſeptennial law of George the firſt, which has confirmed the ariſtocracy introduced at the revolution. Beſides, this law hath removed the conſtitutional ground of the Engliſhman's boaſted right of diſpoſing, of his own money for the ſervice of the ſtate, by electing a new houſe of commons, every time the king wanted a new ſupply, by veſting that power in a ſeptennial houſe of commons, independent of the people. This was deſtroying that mutual bond of obligation, between the king and his people, ſince the king was no longer obliged to his people to give their money, while the houſe of commons, could take it away, without their conſent. It was creating, in the houſe of commons, a dependance upon the king, for their continuance and not upon the people for their election. It was; deſtroying that confidence, between the commons and the people, which had been the ſupport of the conſtitution for many ages; and robbing the people of their remedy for all their grievances. It was, in effect, reducing the government to the ſame ſtate, as under Charles the ſecond; for the injury done to the people, was the ſame, whether they were deprived, of their annual elective rights, by the prerogative of Charles the ſecond, or by an act of George the firſt.

There is another matter, that offers itſelf to our conſideration, in reſpect to theſe two laws, which upon the principles of our conſtitution could not ſubſiſt, and hath been productive of more evils, than I ſhall here enumerate. However, we may aſſert, that they have given an opportunity to five or ſix hundred rich and powerful men, during the ſpace of ſeven years, to diſplay every paſſion, that can diſtreſs a commonwealth, and make the people miſerable; as avarice, pride, malice, envy, and a love of power, which always will actuate eſtabliſh-

ed bodies in government, ſo long as men are men.

And while places, penſions, contracts, and other emoluments, from the publick treaſury, are attainable by members of the houſe of commons, they will be in danger of putting all thoſe paſſions in motion, and of propagating perpetual miſchiefs. A combination of theſe motives actuating the conduct of rich and powerful parties and factions, formed and united together for their private intereſt, may obſtruct the wheels of government to ſuch a degree, as to throw the whole nation into confuſion, in order to force themſelves into offices of profit, truſt, and power, in the adminiſtration. By this means, the executive, and legiſlative authority, which our conſtitution hath ſo carefully divided, may be confounded together, by being in the hands of the ſame men. Under this circumſtance, the people of England, would be reduced to the ſame condition, as the fiſh in the ſea; where the greater are continually devouring the leſs,

Sir Robert Walpole was the great father of corruption, he contaminated the whole nation, with a venal ſpirit, and made the generality of our boroughs, rotten to the very heart. The guilty numbers, now give countenance to the act, and boldly open their hands to the bribe, and think themſelves no longer infamous. Hence perjury, bribery, and corruption, are diffuſed through the whole body of the nation, by the ſame channels that contain the elective power of the people, who now no longer return to the great council of the nation, the wiſe, the juſt, and the honeſt man, but any man that can bribe the higheſt. Let us then return to the principles of our conſtitution, for moſt undoubtedly, free and unreſtrained annual elections are the grand and ſovereign remedy for ſuch a malady, as they would at once, put an end to all buy-

ers,

ers, and conſequently to all ſellers. But ſo long as theſe two laws remain unrepealed, it will not be in the power of the beſt and wiſeſt king, that ever lived, to govern this kingdom with peace to himſelf, and ſatisfaction to his people.

There is not a more dangerous doctrine can be adopted, in our ſtate, than to admit that the legiſlative authority hath any right to alter the firſt principles of our conſtitution, by acts of parliament. Upon this foundation, they may mould it into what ſhape they pleaſe; and, in the end, may make us ſlaves, by law. The houſe of commons are, conſtitutionally, a body of men merely paſſive, with regard to their creation, duration, and diſſolution; and therefore have, by no means, any conſent to give to their own duration, even for an hour. Neither did they ever pretend to ſuch a power, through the whole courſe of our hiſtory, before the rebel-houſe of commons, in the reign of Charles the the firſt; who taught future adventurers the way to deſtroy the conſtitution, and make ſlaves of the people.

I ſhall therefore not heſitate to date the decline of our conſtitution from the REVOLUTION; becauſe the principles of the rebel-parliament of reſtraining the exerciſe of the elective power of the people, by acts of parliament, were adopted into the conſtitution at that very critical period of our hiſtory. Hitherto, it had only the prerogative of the crown to ſtruggle with (ſaving the ſingle inſtance of the rebel parliament abovementioned) but at the revolution, which brought William the third to the crown of England, he, and his parliament, began the practice of reſtraining, the elective power of the people, by the legiſlative authority. A power that might become ten-thouſand times more dangerous, to the elective rights of the people, than the crown could ever poſſibly be.

For whenever the active parts of a government, founded upon the common rights of mankind, ſhall uſurp a power to reſtrain, or deſtroy thoſe rights, from whence they derive their authority, that ſtate is not far from deſtruction.

Thus the primary law of our conſtitution, the firſt principle upon which it was founded, which had ſtood the teſt of twelve-hundred years, and been the admiration of many ages, was now reduced to the commonlevel of a nuiſance, to be corrected by acts of parliament. What had the free ſpirit of our conſtitution done, to deſerve this ſevere correction? Had it too well defended the rights and privileges of the Engliſh people? Had it too well defended the perſons, and property of the ſubject? Had it too well confined, the expence of government, to the neceſſities of the ſtate? Had it too well prevented the publick money from being miſapplied, embezzled, and given away in uſeleſs places, bribes, penſions, and extravagant contracts; that it was now to fall a ſacrifice to this political, ariſtocratical law?

To deduce our rights from the principles of equity, juſtice, and the conſtitution, is very well; but equity and juſtice, are no defence againſt, power. You muſt take your conſtitutional rights, under your own protection, and that quickly too, or they will be loſt for ever. Protect and defend them, as the apple of your eye, from danger, or, as you would your wives, and children, from deſtruction; and never deſiſt from uſing every legal remedy, till you have eſtabliſhed them upon a foundation never more to be ſhaken, either by prerogative, or acts of parliament.

I ſhall beg leave to conclude, this part of my ſubject, by offering a few obſervations upon the principles, and power of acts of parliament, reſpecting their reſtraining, and deſtroying the annual elective

elective power of the people. Firſt it appears, from what has been ſaid, that this annual elective power, the firſt principle of our conſtitution, is a right of inheritance, which was brought into England by our Saxon forefathers,, at the firſt eſtabliſhment of the Saxon mode of government, in this iſland; and which the people hold by the ancient common law of the land. And which they had enjoyed, from generation to generation, for twelve-hundred years, before the reign of William the third. And therefore this elective power of the people, may be truly called, their conſtitutional right of inheritance. An inheritance that can no more be taken from them, or reſtrained, juſtly, than any eſtate, in land, can be taken from the right owner.

Juſtice is an eſſential attribute of law. Were the king, lords, and commons, to make an act of parliament, to take away my eſtate, it would only be an act of power; for it would want, that eſſential attribute, to make it an act of law. The injuſtice done me, would vitiate the act to ſuch a degree, as to make it void in itſelf. And, therefore, all acts of parliament, that diminiſh the elective power of the people, muſt be acts of power, and not acts of law: becauſe they take away, from the people of England, an inheritance more valuable than the greateſt eſtate. An inheritance that comprehends the dignity, welfare, and happineſs of all the people in the Britiſh empire.

I take it for granted, that the houſe of commons would not admit, that the king, or the king and lords, have any right to reſtrain, or deſtroy the elective power of the people, and govern without them. Who then can do it? Surely no man will ſay, that the people either can or would delegate to their deputies, a power of deſtroying, or reſtraining, that elective right which is the founda-

tion of their liberty. If the houſe of commons be veſted with a power to conſent to ſuch a law, then our conſtitution hath eſtabliſhed a power to deſtroy itſelf, and made the rights of the elector depend upon the will of the elected; which is an abſurdity too ridiculous to mention.

Our legiſlative authority is, by its own nature, confined to act within the line of the conſtitution; and not to break through it. Becauſe, the houſe of commons is only veſted, with a truſt, by the people, to the end they may protect, and defend them in their rights and privileges. And, therefore, it is a contradiction in terms, to ſay, they have a right to conſent to a law that may reſtrain, or deſtroy them. I think it is as plain, as any propoſition in Euclid, that the houſe of commons could not conſent to ſuch a law, without a notorious violation of the truſt repoſed in them. If our legiſlative authority be not bound, by this conſtitutional rule, we have been in a dream from the foundation of its eſtabliſhment. And if this be the caſe, why do we talk of our conſtitution in general; or of our conſtitutional rights, privileges, and franchiſes in particular? they are mere ſounds without ſenſe, and words without meaning.

Upon this principle, our conſtitution may be one thing to-day, and another thing to-morrow. It is this, or that, or any thing that our legiſlative authority, for the time being, ſhall think proper to make it. If ſo, they might, ſometime or other make a law, to continue themſelves for life, and enact, that no man ſhall be an elector, for a member of the houſe of commons, that is not poſſeſſed of an eſtate, in land, equal to that required, for a qualification of one of their own members; by which means, they would elect one another, and then the ariſtocracy would completely throw off all diſguiſe: This ſeems to be the point, to which our conſtitution is verging;

verging; and, without great care, in all probability, it will die, OF AN ACT OF PARLIAMENT, at laſt.

CHAPTER VIII.

The dangerous ſtate, of the elective power of the people conſidered, with ſome propoſals for its future ſecurity.

SECT. I.

ALL reaſons that are given for enacting laws, which reſtrain or deſtroy the principles of our conſtitution, are falſe, fraudulent, and deluſive; and are only given as a cloak to hide, from the people, the latent evil, and venal iniquity of ſuch laws.

The chief reaſon given, by the promoters of queen Ann's law, of landed qualifications of members to ſerve in parliament, was this, "That no man ſhould ſit in the houſe of commons, who was not a man of known independant fortune; and conſequently not liable to temptation, or open to the corruptions of the court.."

Theſe, indeed, are words of goodly import, but of no meaning here; and are as foreign from the private reaſons of paſſing that act, as truth is from falſhood. There is not a man, in the Britiſh empire, that does not ſee the falacy of this reaſoning. And Sir Robert Walpole, who founded his whole miniſterial power upon bribery, and corruption, hath told us, from his own experience, that every man had his price.

Our conſtitution hath not placed the independency of the houſe of commons upon the riches, honour, or virtue of the members of that houſe; but ſhe hath placed it upon an IMPOSSIBILITY

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of its being corrupted. She hath placed it upon the abundant number of electors, and the conſtant annual exerciſe of their conſtitutional powers of election.

Had king William, at the revolution, intended to have eſtabliſhed an independant houſe of commons, he would have reſtored the conſtitution to its firſt principles; and eſtabliſhed annual parliaments, and a new houſe of commons every year. This would have been an infallible remedy, againſt all corruption; becauſe no corruption can ſtick upon a body of men, that is continually changing. As ſtanding water ſoon ſtinks, and a running ſtream throws out all impurities, ſo a ſtanding houſe of commons, will ever be a ſtanding pool of corruption; but an ANNUAL CURRENT, through that houſe, will reſtore it to its priſtine purity, and preſerve it INCORRUPT for ever.

Much has been ſaid, and much has been writ about patriotick kings, and patriotick miniſters, but give me leave to tell, the good people of England, that it is all PATRIOTICK NONSENSE. It is the principles of the conſtitution, the conſtant annual exerciſe of their elective powers, and thoſe only, that muſt make this nation free, and happy, It is their buſineſs, as electors, it is their buſineſs, as the people in general, to watch over and take care that the firſt principle of our conſtitution, be not evaded, by any power in the ſtate.

If they will not do this, they muſt periſh; for they will never find any patriotick adminiſtration, that will do it for them. It is not the intereſt of any adminiſtration, to have a ſharp-eyed houſe of commons, to overlook them. They had much rather MANAGE a houſe of commons, than be managed by one. So if they intend to leave it, to ſuch an adminiſtration, they may wait like the Jews, till dooms-day; and cry lo! here he cometh, and lo! there

there he cometh, but they will never find any ſuch Meſſiah, that will come to their aſſiſtance.

The people at large, when they loſe their conſtitutional guard, are, like a rope of ſand, eaſily divided aſunder, and, therefore, when the acting parts of the conſtitution, ſhall abuſe their truſt, and counter-act the end for which they were eſtabliſhed, there is no way of obtaining redreſs, but by aſſociating together, in order to form a new chain of union and ſtrength, in defence of their conſtitutional rights. But inſtead of uniting, for their common intereſt, the people have ſuffered themſelves to be divided, and ſplit into faction and parties, to ſuch a degree, that every man hath roſe up in enmity againſt his neighbour; by which they have brought themſelves under the fatal curſe, of a kingdom divided againſt itſelf, which cannot ſtand.

It is the common political trick of ſtateſmen, to throw out ſome bone of contention among the people, to divide them, and ſo divide their ſtrength; by which the latter become as weak in oppoſition as children; while the former, and their prevailing faction, get poſſeſſion of ſo much power, as to overturn the conſtitution, and rob the people of their rights. Thus the people of England have been ſpending their ſtrength and fury upon one another, about whigs and tories; high-church, and low-church; conformiſts, and non-conformiſts; and ſuch like things of no more import to the happineſs and well-being of this nation, than long men, or ſhort men; or fat men, and lean men; till the prevailing faction of thoſe days obtained a law, under pretence of providing for the diſtemper of the times, by which they have loſt——nay, what have they not loſt?

They have loſt the diſtinguiſhing character between free-men and ſlaves! They have loſt the diſtinguiſhing character of Engliſhmen! They have loſt

loſt what the moſt tyrannical kings of England could never force from them! They have loſt what their forefathers have been ſpending their blood and treaſure to defend for theſe thouſand years! They have loſt the greateſt jewel that ever any people poſſeſſed! They have loſt their conſtitutional and natural liberty, their birthright, and inheritance, derived from God and nature! They have loſt their conſtitutional means of redreſs for all their grievances! They have loſt their all, their every thing, by that damnable ſeptennial law, which has fettered down the elective power of the people, like a dog to a manger, which is only ſuffered to go abroad, ONCE IN SEVEN YEARS, for an airing!

Let us then fling away all animoſity, and tear from our hearts all party, names of diſcord, and evil diſtinction; and unite, heart and hand, as one man, from the eaſt to the weſt, and from the north to the ſouth, and recover, by our union, what we have loſt by our diviſions. Let us carefully weed, from our conſtitution, all modern heterogeneous matter, that hath poiſoned its principles, and eſtabliſhed a tyranny upon the ruins of our ancient laws and liberties.

SECT. II.

I WILL now endeavour to point out what is neceſſary to be done, to eſtabliſh the conſtitution, in ſome meaſure, upon its old foundation; without diſturbing, as little as poſſible, the preſent ſyſtem of things.

The decayed ſtate of our boroughs ſhould be the firſt object of our attention, which are now reduced to the moſt alarming condition, and call aloud for ſome effectual remedy; and therefore I would beg leave to propoſe: That wherever there is a bo

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rough, the inhabitants in the country round that borough, within a certain ſphere, ſhould be permitted to give their votes for the repreſentatives of that borough. And that this general rule ſhould take place throughout the iſland of Great Britain.

I ſhould prefer the uſe of the old diviſions in the land, called the rural tithings, which I apprehend to be our high-conſtables diviſions, where they could be found; but as that may not be always the caſe, we muſt make uſe of pariſhes which are diviſions very well known every where. And, therefore, I would have every pariſh, within a certain line, united to that decayed borough which is the neareſt to it; by which means every borough will receive an additional number of electors.

I would likewiſe have one general rule to eſtabliſh the right of election for every borough, or town corporate, in the kingdom. And this general rule ſhould be the ancient rule, and the ſame that is now uſed in Weſtminſter, and many other boroughs: where every reſident inhabitant, that pays his ſhot, and bears his lot, ſhould be entitled to his election, for a member of parliament, in that diviſion to which he belongs.

This regulation is eaſy and practicable. It would remove all the evils that attended the decayed ſtate of our boroughs, without introducing any new inconveniences. It would deſtroy the practice of purchaſing boroughs, and fixing them in private families. It would deſtroy all bribery and corruption at elections. It would deſtroy all riot and diſturbance; becauſe all riot and diſturbance proceed from bribery and corruption; and not from numbers. And, in fine, it would give the true and honeſt ſenſe of the people, for their repreſentatives in parliament, which is the end of all election.

In order to prevent the ſcandalous practice of any future members of parliament bartering away the

the intereſt of their conſtituents, for places, penſions, and contracts; I could wiſh to ſee the members of the houſe of commons ſo cloſely connected with the people, by ſome independent mode of election always in their power, that their intereſts could never be ſeparated; which would effectually put it out of the power either of the crown, or their members, to reſtrain the elective power of the people.

This might eaſily be effected by bringing back the power and mode of election, in ſome meaſure, to their original principles. For this end, let every city, town, borough, and cinque port elect their members, to ſerve in parliament annually; as regularly as a corporation chooſes their mayor, or chief magiſtrate. And let the ſame rule take place, for the members of every county; who ſhould be elected, by the freeholders, in the ſame manner annually. Let theſe men be ſtiled members elect, and be always ready to be ſworn into their office whenever the king ſhall think proper to aſſemble his parliament.

The advantages of this regulation are ſo obvious, that it is almoſt needleſs to mention them. It would effectually ſecure the exerciſe of the elective power of the people to themſelves, which is all in all. It would deſtroy all bribery and corruption within doors and without. It would effectually prevent the inconvenience of long parliaments; as no parliament could ſit longer than one year; becauſe the power of the ſitting member would die away, and expire with the time; ſince he would of courſe be ſuperſeded by the member-elect for the ſucceeding year. And further, there would be always a houſe of commons ready elected, to be called together upon any emergency, that the ſtate of the nation might require. Neither would this eſtabliſhment interfere with the prerogative of the crown, in calling, proroguing, or diſſolving the parliament. And laſtly, it would be

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coeval with the conſtitution, and grounded upon the firſt principles thereof.

To which I ſhall add, that, in extraordinary caſes, where the king would not do his duty, in aſſembling his parliament, when the ſtate of the nation might require it, as was the caſe of Charles the firſt, that any twenty-five. or fifty if you pleaſe, of theſe members-elect, ſhould be authorized to attend the king with a petition, to pray him to aſſemble his parliament, agreeable to the duty of his office; which, if he refuſe to do, in ſome convenient time, they ſhould be empowered to iſſue out ſuch orders themſelves to the proper officer for the time being; and the aſſembling of ſuch parliament ſhould be deemed good in law, as if the ſame had been ſummoned by order of the king himſelf.

To ſecure the honeſt elector from the reſentment of any man, that might think himſelf offended, by his freely giving his vote agreeable to his conſcience, let it be eſtabliſhed, as an invariable rule, that every elector ſhall give his vote for a member of the houſe of commons, by ballot only. A houſe of commons, formed upon this principle, would ſoon rectify all grievances, and repeal, with indignation, every unconſtitutional act that hath taken place before or ſince the revolution.

Were every reſident inhabitant, that pays his ſhot and bears his lot, to be admitted to his right of election, in the place where he ſo reſides; and were our decayed boroughs to be reſtored to their original independency, upon the plan here laid down, it would increaſe the number of electors to a great degree. But this, upon the preſent mode of ſwearing every individual, would render elections extremely tedious, and difficult to be taken. To obviate this inconvenience, I would obſerve, that all large bodies ought to move in ſtreight lines, to avoid confuſion; and, therefore, all our elections ought

to take a military caſt, to reduce them to order, and facilitate their election.

I will endeavour to give a plan of an election, conducted upon the principles of a ballot, under a military order:

Firſt, let every conſtable, as the peace-officer, be the commanding officer upon this occaſion.

Secondly, let publick notice be given fourteen days before the day of election, of the place where, and time when, the election is to be made. And let the names of the candidates, if they can be known, be ſpecified; and the time and place of rendezvous be appointed; where every elector ſhall appear, that means to attend his election.

Thirdly, let every elector, ſo appearing, ſign his name upon a paper; to be called the conſtable's-liſt of electors.

Fourthly, let the people, being thus aſſembled, march to the place of election, being firſt provided with the names of the candidates they intended to poll for, fairly written upon a piece of paper, or card; that the elector may be ready to deliver it into the ballot-box without delay,

Fifthly, let one or more large ballot-boxes be provided, and placed in ſuch a manner that a whole diviſion of electors can march by them in a ſingle line.

Sixthly, let every conſtable take care to have his men drawn up in a line, as they ſtand in his liſt; and let them march in that order till the conſtable arrives at the ballot-box, where he ſhould make a halt, and deliver his liſt to the clerk, or proper officer appointed to receive it; and then ſwear that the names of the men, therein contained, are inhabitants of his diviſion, and that they are liable to pay their ſhot, and bear their lot; and as ſuch, are entitled to their election. This being done, the clerk ſhould call over the names in the liſt, as the men

men march ſlowly up to the box; that every man may anſwer to his name, as he advances to put his ballot into the box, and then march on without any ſtop, or delay; there being no occaſion any further to ſwear, about the matter. The conſtable may then fall in with the rear of his men, and march them home in the ſame order they came. And the next conſtable, in the line, ſhould ſucceed to his place at the box, with another diviſion, which muſt repeat the ſame thing.

Seventhly, from theſe boxes, the clerks of the poll muſt collect the numbers for each candidate; and then the returning officer will be able, to declare the member-elect.

This apparatus ſhould be attended with all the ſhow, and parade, the places will conveniently afford; ſuch as drums, trumpets, and colours, to enliven the march, and make it a day of pleaſure.

It would be well if ſome of the common lands, belonging to many of our towns, were ſet apart to defray the expence of ſuch elections; an uſe for which they were perhaps, originally, intended. And ſome of the waſte lands, in every county, ought to be encloſed, and rented out, to eſtabliſh a fund, to diſcharge the neceſſary expence of the attendance, of all their members of parliament, that no gentleman may be obliged to ſpend his private fortune in the ſervice of his country. Or if ſome of the church-lands, or crown-lands, were appropriated to this ſervice, they would be much better employed than they are at preſent. By this military mode of the electors giving their votes by ballot, the elections would not take up one fourth of the time they do, as they are now conducted. And when the people, of this kingdom ſhall forget their own dignity, and importance, or ſhall be ſo far loſt in luxury, corruption, pride, and lazineſs, as not to attend upon this buſineſs, a few days in every

year, they muſt then ſubmit their backs to the whip, and patiently endure the correction of ſlaves. For election and liberty, are ſynonimous terms, and where annual election ends, there ſlavery begins.

The only effectual remedy the people of England have now left, for the redreſs of their grievances, is to enter into legal aſſociations, in defence of their conſtitutional rights, and liberties. The head of theſe aſſociations ſhould be in London. And the friends to the conſtitution, in every market-town in England, ſhould eſtabliſh the like there; and mutually correſpond with each other, that they may act in concert, for the public good. I could even wiſh to ſee a conſtitutional club eſtabliſhed in every pariſh; that, if there be as much public virtue ſtill left, in this country, as will be able to ſave it, it may be found. The following reſolves, ſhould be the grand object of theſe aſſociations:

I. Reſolved, That we will hand down to poſterity ſacred, and ſecure, all the rights, liberties, and franchiſes of the people of England; which God, and the conſtitution, have handed down to us, from father to ſon, for thirteen hundred years.

II. Reſolved, That we will, to our utmoſt power, endeavour to reſtore our ancient decayed boroughs, to their original ſplendour, and independency, in point of election for members to ſerve in parliament; that we may not, for the future, be bought and ſold like oxen.

III. Reſolved, That we will not give our votes or intereſt to any known placeman, penſioner, or contractor whatever, to be a repreſentative in parliament; becauſe by ſo doing, we confound the executive, and legiſlative authority together; which, in our conſtitution, ſhould for ever be kept ſeparate.

IV. Reſolved,

IV. Reſolved, That to elect placemen, penſioners, and contractors, into the houſe of commons, is intruſting our money, in the power of thoſe, who will apply as much of it as they can, to their own uſe.

V. Reſolved, That to elect placemen, penſioners, and contractors, into the houſe of commons; is to elect the ſame men that ought to call all placemen, penſioners, and contractors to an account.

VI. Reſolved, That by ſo doing, we defeat all inquiry into the waſte of publick treaſure; and put it in the power of theſe men, to vote in the houſe of commons, that the publick money is beſt diſpoſed of when it is moſt put into their own pockets.

VII. Reſolved, That we will not give our votes, or intereſt, to any man that will not while he is a candidate, promiſe under his hand in writing, to move, and vote in the houſe of commons, when he becomes a member for the repeal of the SEPTENNIAL LAW; by which every Engliſhman, is debarred the conſtitutional exerciſe of his elective right; by which the firſt principles of our conſtitution are openly evaded, and the people left without a remedy for their grievances.

VIII. Reſolved, That we will not give our votes, or intereſt, for any man that will not while he is a candidate, promiſe under his hand in writing, that he will when he is a member of the houſe of commons, move and vote, for the repeal of that law, for the landed qualification for members to ſerve in parliament; by which our free conſtitution is changed into a mean, ſelfiſh ariſtocracy.

IX. Reſolved, That we will not give our votes, or intereſt, for any man that will not while he is a candidate, promiſe under his hand in writing, that he will when he becomes a member of the houſe of commons, move and vote, for the eſtabliſhment

of ANNUAL ELECTIONS, for repreſentatives to ſerve in parliament, grounded upon ſuch conſtitutional principles as ſhall not for the future be evaded either by prerogative, or acts of parliament.

Let the people of England only contemplate their own ſtrength, dignity and importance in the ſtate, and they will ſoon find that the conſtitution hath placed in them, ſuch an influence over the legiſlative authority as muſt command all the reſt. And that their deputies in parliament are only the conſtitutional medium through which the people exerciſe their authority. For to make uſe of the gameſters phraſe, the people of England have all the game in their own hands, and have only to play their cards honeſtly, and ſupport one another in every thing that relates to their rights and liberties.

CHAPTER IX.

Of the right and power of Juries.

THE trial by Juries is one of thoſe important bleſſings beſtowed upon the Engliſh people, which were introduced into this kingdom with our conſtitution. It is a peculiar privilege which no nation in the known world, enjoys beſides the Engliſh; and was intended as a ſtrong barrier, or fort of defence, always lodged in the hands of the people to ſecure them againſt all tyranny, ſlavery, and oppreſſion.

As the Engliſh people cannot be bound by any law, without the conſent of their repreſentatives firſt had in parliament, ſo neither can any Engliſhman ſuffer in his perſon or eſtate, for the breach of any law, or real or pretended crime, without the conſent of the people firſt had by a Jury of his peers,

or

or equals: That the life or property of an Engliſhman might not be expoſed by falſe accuſations, or the venality of officers appointed to adminiſter the law.

It was too ſacred a depoſit to be truſted with any one man, or any body of men whatever. And therefore they ſuffered no man to determine in their courts of law, upon the life and liberty of the people, without the conſent and approbation of TWO JURIES, ſworn upon the occaſion: one called the grand Jury, to find the criminal matter of accuſation, or, as it is commonly called, to find the bill; and the other the petty Jury, to try the cauſe.

The intent of a grand Jury, is expreſſed in a ſtatute of the 25th of Edw. 3. 4. and 42d of Edw. 3. 3. which ſays, "That for the preventing of miſchiefs done by falſe accuſers, none ſhall be put to anſwer, unleſs it by preſentment, or indictment of good and lawful people, of the ſame neighbourhood where ſuch deeds be done." That is to ſay, by a grand Jury. This was the ancient law of the land, and confirmed by this ſtatute.

Tyranny hath invented at different times, many ways to ſubvert and undermine the right and power of Juries. But the modern mode of doing it was by the eſtabliſhment of the ſtar-chamber court begun about the reign of Henry the ſeventh, and whch continued increaſing in power and authority, down to the reign of Charles the firſt; when *ex officio* informations, and attachments raged like a peſtilence, and threatened deſtruction to every man that durſt oppoſe the arbitrary meaſures of the court.

By *ex officio* informations, and attachments, they brought people to anſwer in the ſtar-chamber, or before the king's-council, for any thing they choſe to call a crime, and made uſe of no other law than

their will, to judge both of the crime and puniſhment. So that many gentlemen were brought before the ſtar-chamber court, and condemned to pay large fines, and ſuffer long impriſonments, with many aggravating circumſtances; ſuch as being refuſed the uſe of pen, ink, and paper, and denied the aſſiſtance of their wives, and families, to adminiſter comfort to them, in their diſtreſs, without any jury, or lawful cauſe appearing. And therefore, by an act of the 16th of Charles the firſt, chap. 10. the ſtar-chamber court, and all the modes of practice by attachment, information, or otherwiſe, were totally aboliſhed, and done away, notwithſtanding any *cuſtom, uſage, or ſtatute, to the contrary.*

But in the reign of Charles the ſecond, when he had obtained a corrupt houſe of commons, they ſuffered him, and his adminiſtration, to break through all laws, both human, and divine. For, as a certain author obſerves, they were worſe than dumb dogs; they not only neglected to defend and guard the ſheep, but on the contrary, they themſelves protected, and aſſiſted the wolves, to devour the ſheep. And notwithſtanding the law of Charles the firſt (above recited) the practice of proceeding by *ex officio* informations, and attachments, continued common in this reign; for they only changed the court, from the ſtar-chamber, to the king's bench, which became almoſt as oppreſſive, and vexatious, as the ſtar-chamber court had ever been.

Thus it continued till the revolution, when there was a violent ſtruggle to aboliſh the practice entirely, but it only ended, like many other things at that time, in eſtabliſhing the evil by an act of parliament. For, by the 4th and 5th of William and Mary, it was eſtabliſhed with this limitation, That no information ſhould be filed, without the conſent

of

of the court of king's-bench. But this was no relief, to the people, in reſpect to the ground of their complaint. For this law ſtill prevented the inqueſt by GRAND JURIES, and obliged the people to anſwer in expenſive, and vexatious ſuits with the crown, contrary to the uſual mode by preſentment, or indictment, agreeable to the ancient law of the land, and the ſtatute of Edward the third, before mentioned.

It makes a vaſt difference, between an information brought before the king's bench, and before a grand Jury. In the firſt caſe the officer of the crown, never fails to meet with the countenance of the court, by which he is permitted to harraſs, and perplex the ſubject, with tedious and expenſive law-ſuits. Whereas, before a grand Jury, he would generally find himſelf a FALSE ACCUSER, and his information thrown out with an *ignoramus*. So that by this law, of William and Mary, whenever the attorney-general thinks proper, to proſecute his information to an iſſue, the ſafety of the perſon, and property of the ſubject, muſt now wholly depend upon the verdict of one ſingle Jury, empannelled for the trial. And therefore, I ſhall mark this revolutional law, as the firſt approach to evade, and take away the right, and power of Juries, by acts of parliament.

Notwithſtanding this great privilege of the Engliſh people of trial by Jury, yet we have heard that the chicanery and influence of the judge, in courts of juſtice, have been too often ſucceſsfully employed to miſlead the minds of the Jury, to gain a verdict in ſupport of tyranny and ſlavery. May ſuch judges meet with the fate of judge Jefferies, and ſuch Juries with a full meaſure of their own ignorance and temerity. Can ſuch JURIES deſerve leſs, who, forgetting their own weight and importance, are over-awed by a ſervile fear, from doing what is

right and juſt, leſt they ſhould offend the mandates of an imperious, time-ſerving judge? For ſo long as tyranny can, this way, make the people inſtruments to deſtroy one another, it needs no other power to accompliſh their ruin.

I ſhall conclude this chapter with a few quotations, from an old author, upon the right, and power of Juries. "As the office of Juries (ſays he) is of ſuch great importance, to the life and property of the ſubject, ſo the wiſdom of our law hath provided that the ſame ſhall be ſupplied with perſons of ability, honeſty, integrity, and indifference. By the law every jury-man, that is returned for the trial of any iſſue, or cauſe, ought to have three properties. Firſt, he ought to be moſt ſufficient for his underſtanding. Secondly, he ought to be dwelling moſt near to the place, where the queſtion is moved. And thirdly, he ought to be indifferent to the parties, and matter in queſtion. And then he is accounted, in law, a free and legal man. Otherwiſe he may be challenged, and not ſuffered to be ſworn.

"Dr. Cowel tells us that Juries, in former times, uſed to ſit with the judges in a kind of equality, whereas now a-days they attend them with great humility. But many wiſe and learned men have wondered, that ſince the law hath conferred, the right of judgment, in the Jury, why they ſhould have no mark of honour, or diſtinction.

"Among other devices to undermine the rights and power of Juries, and render them inſignificant, there has lately an opinion been advanced, That they are only judges of fact, and are not at all to conſider the law. So that if a perſon be indicted for a fact, which really is no crime in itſelf by law, but is only worked up by words of wicked meaning, ſuch as TREASONABLE, SEDITIOUS, LIBELLOUS, &c. if the fact be but proved to be done, though the

the ſaid wicked circumſtances do not appear, the Jury are to take no notice of that, but to bring in the man guilty, and leave the conſideration of the crime and puniſhment to the court. Thus ſome people argue. But this is an apparent TRAP, at once to perjure ignorant Juries, and render them ſo far from being of good uſe, as to be only tools of oppreſſion to ruin, and murder, their innocent neighbours with the formality of law.

" Where the act or naked matter of fact charged, is a crime of offence againſt law, ſuch as killing a man, levying of war againſt the king, or ſtealing, theſe facts being proved to be wilfully done, is all that is neceſſary to prove the man guilty. But where the act, or naked matter of fact, is in itſelf innocent, or indifferent, in that caſe the criminal intent that it was done maliciouſly, with ſuch or ſuch a deſign, as that it was done with a treaſonable, ſeditious, or libellous INTENT, muſt be proved, otherwiſe there is no CRIME PROVED, and conſequently no fit matter to be put to a trial; in that caſe the grand Jury is bound, in conſcience, and law, to return an *ignoramus*, and a petty Jury not guilty.

" Some Jury-men may ſay, if we do not find according to evidence, though we have reaſon to ſuſpect the truth of what they ſwear, or if we do not find as the judge directs, we may come into trouble, the judge may fine us, &c.—I anſwer, this is a vain fear. No judge dare offer any ſuch thing: you are the proper judges of the matter before you, and your ſouls are at ſtake, you ought to act freely, and are not bound, though the court demand it, to give the reaſons why you bring it in thus, or thus.

" But to ſatisfy you that a Jury, is no way puniſhable for giving a verdict according to their conſcience, though againſt ſeeming evidence, and the

the reaſons why they are and ought not to be queſtioned for the ſame, I ſhall here recite an adjudged caſe, reported by the learned Sir John Vaughan, whoſe book is licenſed by the lord chancellor, the lord chief juſtice North, and all the judges then in England. The whole well worth reading, but I ſhall only ſelect certain paſſages.---The caſe was this.---

"Buſhel, and others of a Jury, not having, at a ſeſſions, found Pen and Mead (two quakers) guilty of a treſpaſs, contempt, unlawful aſſembly, and tumult, whereof they had been indicted, were fined forty pounds a man, and committed till they ſhould pay it.

"Buſhel brought his *habeas corpus*, and upon the return, it appeared that he was committed.---"For that contrary to law, and againſt full and clear evidence openly given in court, and againſt the directions of the court, in matters of law, they had acquitted the ſaid Pen and Mead to the great obſtruction of juſtice, &c." Which, upon ſolemn argument, was by the judges declared to be an inſufficient cauſe of FINING and COMMITTING them, and they were diſcharged, and afterwards brought their actions for damages.

"The reaſons of which judgment are reported by judge Vaughan, and amongſt them he uſeth theſe that follow, which I ſhall give you in his own words. "One fault in the return is, that the jurors are not ſaid to have acquitted the perſons indicted, againſt full and manifeſt evidence corruptly, and knowing the ſame evidence to be full, and manifeſt, againſt the perſons indicted: For how manifeſt ſoever the evidence was, if it were not manifeſt to them (the jurors, and that they believed it ſuch, it was not a A FINABLE FAULT, NOR DESERVING IMPRISONMENT: upon which difference the law of puniſhing jurors, for falſe verdicts, principally depends.

"I would

" I would know whether any thing be more common, than for two men, ſtudents, barriſters, or judges, to deduce contrary and oppoſite concluſions, out of the ſame caſe in law? And is there any difference that two men ſhould infer diſtinct concluſions from the ſame teſtimony? Is any thing more known, than that the ſame author, and place in that author, is forcibly urged to maintain contrary concluſions, and the deciſion hard which is in the right? Is any thing more frequent in the controverſies of religion, than to preſs the ſame texts for oppoſite tenets? How then comes it to paſs, that two perſons may not apprehend, with reaſon and honeſty, what a witneſs, or many ſay, to prove in the underſtanding, of one, plainly one thing, but in the apprehenſion of another, clearly the contrary thing? Muſt, therefore, one of theſe merit FINE AND IMPRISONMENT, becauſe he doth that which he cannot otherwiſe do, preſerving his oath and integrity? And this is often the caſe of the judge and the jury.

" If the meaning of theſe words (in the return,) finding againſt the direction of the court, in matters of law, be, that if the judge having heard the evidence given in court (for he knows no other) ſhall tell the Jury, upon this evidence. " The law is for the plaintiff, or for the defendant, and you are under the pain of fine, and impriſonment, to find accordingly; and the Jury ought in duty ſo to do;" then every man ſees, that the Jury is but a troubleſome delay, great charge, and no uſe in determining right, and wrong; and that therefore the trials by them may be better aboliſhed, than continued: which were A STRANGE NEW FOUND CONCLUSION, AFTER A TRIAL SO CELEBRATED FOR MANY HUNDRED YEARS.

There are many other ways by which evidence, may appear to a Jury, which doth not appear in court.

" court. Firſt, the Jury being returned from the vicinage, or place, where the cauſe of action ariſeth, the law ſuppoſeth them to have, thereby, ſufficient knowledge to try the matter in iſſue (and ſo they muſt,) though no evidence were given, on either ſide, in court; but to this evidence the judge is a ſtranger. Secondly, they may have evidence from their own perſonal knowledge, by which they may be aſſured, and ſometimes are, that what is depoſed in court is abſolutely falſe; but to this the judge is a ſtranger, and he knows no more of the fact than what he hath learned in court, and perhaps by falſe depoſitions, and conſequently knows nothing. Thirdly. the Jury may know the witneſſes to be ſtigmatized, and infamous, which may be unknown to the parties, and conſequently to the court. It is abſurd to fine a jury for finding againſt their evidence, when the judge knows but part of it; for the better and greater part of the evidence, may be wholly unknown to him, and this may happen in moſt caſes, and often doth.

" To what end is the Jury to be returned out of the vicinage, where the cauſe of action ariſeth? To what end are they challenged ſo ſcrupulouſly, to the array and poll? To what end muſt they have ſuch a certain freehold, and be *probi & legales homines*, and not of affinity with the party concerned? To what end muſt they have in many caſes, the view for exacter information chiefly? If, after all this, they IMPLICITLY muſt give a verdict by the dictates, and authority of ANOTHER MAN, under pains of fines, and impriſonment, when ſworn to do it according to the beſt of their own knowledge? A man cannot ſee by another's eye, nor hear by another's ear; no more can a man conceive by another's underſtanding, or reaſoning; and though the verdict might be right which the jury give (by the direction

direction of the court,) yet they being not aſſured that it is ſo, from their own underſtanding, are forſworn, at leaſt *in foro conſcientiæ*."

"I conclude therefore, that this return, charging the priſoners to have acquitted Pen and Mead, againſt full and manifeſt evidence, is no cauſe OF FINE OR IMPRISONMENT." It appears by a note upon the margin, that if this mind were ten judges out of eleven. The chief baron Turner gave no opinion, becauſe not at the argument."

Thus far judge Vaughan, which is a piece of fine, cloſe, ſtrong reaſoning, and full to the matter before us; to ſhow that an Engliſh Jury, are, at all times, the only judges to determine of EVERY PART OF THE MATTER in iſſue, and that they are bound by nothing, in their judgment, but the free dictates of their own conſcience.

This old author concludes his book with a prayer, "That Almighty God would preſerve our moſt gracious king, and defend us from religious, tyranny, a foreign yoke, and domeſtick ſlavery, and continue to us the enjoyment of OUR GOOD OLD LAWS, LIBERTIES, AND PRIVILEGES, and bring all thoſe to exemplary juſtice, that have, or ſhall dare attempt to ſubvert, diminiſh, or undermine them: To which I ſay, AMEN.

CHAPTER X.

The conſtitutional right of the Britiſh parliament, to tax our diſtant provinces, explained and juſtified.

WE are now arrived, at the laſt diviſion of our work; which is to conſider the relation that ſubſiſts, between Great Britain and her colonies, with reſpect to the power of the legiſlative authority to tax them, without being repreſented

ſented in parliament, by members of their own election: or in permitting them to tax themſelves, in ther own provincial aſſemblies.

All lands, in our diſtant provinces, that are acquired at the expence of the people of England, either by conqueſt, treaty, purchaſe, or by any other title, from that moment become their property; and conſequently are, at all times, ſubject to the order, and direction of the legiſlative authority. Every Engliſhman, to whoſe happy lot it fell, to enjoy this new country, was bound, before his embarkation, by the determination of our acts of parliament; and ſubject to pay his ſhare of all impoſts, and taxes, that were granted to defray the national expence of the government, equally with the reſt of his brethern, in the like circumſtances.

If then the lands, and the people that were to occupy theſe lands, were equally ſubject to the authority of parliament, before their embarkation, they muſt be ſo ſtill. Becauſe there is no authority in our ſtate, but what is inferior to that authority: and no inferior authority can diſcharge them from their obedience to the authority of parliament; or releaſe them from doing their duty, to the commonwealth, whenever the ſtate ſhall require that duty from them.

To releaſe the Americans, from the authority of parliament, in point of taxation, in any degree, is a matter of that importance which concerns not only this generation, but all future poſterity. It is not like a bad act of parliament, which, by repealing it, you may repeal the evil; but it is an act, of the nature of ſuicide, which deſtroys the being by the very act itſelf. It would diſſolve the community, raiſe a ſtate within a ſtate, propagate perpetual quarrels, and lay the foundation for the final deſtruction of the Britiſh empire.

It

It would give a more fatal blow to the glory, power, and ſtrength of Great Britain than could be effected by a combination of the whole family compact. While united we may bid defiance to the whole world. But being divided, we ſhall become ſubject to the inſult of every petty ſtate in Europe. In a word, the nature of government doth not admit of any other mode of union, in one ſtate, but by the equitable acts, and laws of one legiſlative authority.

When the plan of colonizing, the lands in America, was adopted, it was adopted for the general good of the whole community, and not for the particular good of the ſettlers. And that general good is the condition, upon which the inhabitants of America hold their lands, as members of one and the ſame community; but as members who have placed themſelves, for the enjoyment of theſe lands, at ſuch a diſtance from home, as excludes them from the exerciſe of their right of election. And the people of England, aſſembled in parliament, in their legiſlative capacity, are the only judges what that general good ſhall be, and how it ought to operate, at all times, and upon all occaſions; when any ſubject relating thereto, may become an object of their attention.

It hath always been the cuſtom in England, upon any national buſineſs, that required council and ſtrength, to incorporate, by letters-patent, certain men, with a power ſufficient to accompliſh the buſineſs for which they were incorporated. The king, who is in the conſtant exerciſe, of the executive power, in the ſtate, always did the buſineſs of the ſtate; and, therefore, it immediately falls within his province, to ſee any plan, of national utility, put into execution; and to authorize the acting parties by a writing, veſting them with certain powers, for the accompliſhment of the buſi-

neſs

neſs which is to be done. Which writing, when properly authenticated with his hand and ſeal, is commonly called the king's-charter, or letters-patent. Upon this principle, the king can grant any charter for the good of the community; but he can grant no charter, to the injury of the community; and much leſs can he exclude any part of his ſubjects, from the authority of parliament, and particularly reſpecting the power of their taxation laws.

The buſineſs, now before us, to be conſidered, is the peopling, a new diſcovered country, with Engliſh inhabitants; a buſineſs, at firſt, as new to the Engliſh, as the country they were to inhabit. To eſtabliſh colonies in any country, is very expenſive, and uncertain as to the event; and they are at beſt, very ſlow in their progreſs, and advancement to maturity.

The mode made uſe of, by the ſtate, to people this new country, hath been various, at various times; but the general method hath been to veſt a property in the lands, in a ſelect number of men; upon condition, that they divided it amongſt ſuch of the Engliſh families, as choſe to partake of that benefit. This was done with an intent, that the infant colony might be under the immediate care of a body of men, whoſe intereſt ſhould direct them, to promote the eſtabliſhment of the colony, with all their power; becauſe the value of the land would increaſe, juſt in proportion to the number of inhabitants that ſhould ſettle upon it. Such was the mode, and ſuch were the motives, by which the lands, in North-America, were at firſt divided? and which are now diſtributed, among three millions of Engliſh people.

It is ſurpriſing, that it could ever enter into the head of any man, that theſe new lands, are not as much ſubject to the taxation laws, of the parliament of

of Great Britain, as the old lands. Or, in other words, that the people, on the other ſide the Atlantick, are not as much ſubject to pay taxes, as the people on this ſide the Atlantick: ſince they are equally protected, by the ſame fleets, and armies, from the attack of all their enemies. It never was the intention of the government, to eſtabliſh a new ſtate independent of the old one; which it muſt be, if our colonies are independent of the legiſlative authority of the old one, in any degree; eſpecially in their taxation laws.

As to the form of the internal police of the government of the colonies, it was left, for ſome time, to the care of the patentees, who eſtabliſhed, ſome one kind of government, and ſome another; as their fancy, intereſt, or inclination directed them. And this continued till time had declared the ſucceſsful event of their undertaking; and the colonies had arrived at a certain degree of ſtrength and permanency, which afforded a proſpect of ſtability, and duration. It then became neceſſary, for the general good of the whole community; and for the future well being, and proſperity, of the colonies in particular; that a more uniform, and regular mode of government, ſhould be eſtabliſhed amongſt them, for the future.

It may not be amiſs to recall to mind, that our Saxon forefathers made uſe of the ſame mode of government for a ſhire, as for a kingdom. And the ſame rule was obſerved then, as is now, in ſome of our great cities, which are made towns, and counties of themſelves; or, if you pleaſe, towns and ſhires of themſelves; from whence comes that ſimilarity between the government of our cities, and the government of the kingdom, at this day.

It was from this principle, of the government of our cities, that the crown formed, and eſtabliſhed,

with a little variation, the plan of government, for the colonies. There the governor, council, and houſe of repreſentatives, are veſted with the ſame authority, as the lord-mayor, aldermen, and common-council, of the city of London. They are veſted with a power, to keep the peace, to puniſh offenders, and to do all acts of juſtice, amongſt themſelves. And as ſuch, they have a power to make laws, for the good government of the colony, under the inſpection, and correction of the adminiſtration at home; by which they can provide for the internal police, and expence, of the adminiſtration of the government within the colony.

And hath not every county, and town in England, at this day, their ſeparate powers to provide for the internal police, of their reſpective communities, and to charge the expence upon the inhabitants? But is all this any proviſion for the publick defence of the ſtate, or the whole community in general? No, independent of this, there is a duty owing to the whole united community at large; by which every man, in the Britiſh empire, is obliged, by all the laws of juſtice, equity, and reaſon, as well as the conſtitution, to contribute his ſhare (in proportion to his property) to the national expence of the ſtate; neceſſarily incurred for the defence, protection, and government of the whole community in general. And therefore, I would have it particularly remarked, that the expence, of this internal police in England, was never conſidered as a national expence, or ever brought to the national account at all; but was merely local, and confined within the reſpective diviſions into which the country was divided.

So long as our provinces were in their infancy, it was acting the part of a tender parent to indulge them, by relieving them from all national expence; ſince

ſince which, we have continued our tenderneſs, to a criminal exceſs, both in time, and degree. But now that they are become able, we call upon them to do their duty, in a national capacity; by contributing their ſhare, to the expence of the ſtate, with the reſt of their brethren at home.

The power of providing for this national expence is the point of conteſt, between Great Britain and her American colonies. Amongſt the reſolves of the repreſentatives of the Maſſachuſet's-Bay, unanimouſly paſſed in a full houſe, on July the 8th, 1769, we have their ſenſe upon this matter. And though the reſt of our colonies, in America, may not have expreſſed themſelves ſo clearly, yet their conduct fully manifeſts the ſame opinion.

I ſhall give one of their reſolves, as we have it in the publick papers: "Reſolved, as the opinion of this houſe, that the ſole right of impoſing taxes, on the inhabitants of this his majeſty's colony of Maſſachuſet's-Bay, is now, and ever hath been, legally, and conſtitutionally veſted in the houſe of repreſentatives lawfully convened, according to the ancient and eſtabliſhed practice; with the conſent of the council, and of his majeſty the king of Great Britain, or his governor, for the time being."

I could have wiſhed that the gentlemen, of the houſe of repreſentatives, in the Maſſachuſet's-Bay, had been more explicit with reſpect to the ground, upon which they found their opinion, for it is no uncommon thing, to find bodies of men reſolving, what they have no right to reſolve. They ſay the ſole right of taxing, the people of their province, is veſted in them by law, and the conſtitution. I ſhould be glad to know by what law, or upon what principle of the conſtitution, they find that right veſted in them. If they had confined their right of taxing, the people of their province, to pay the neceſſary provincial expences, of the internal police

of their province, there could have been no objection.

But if they mean to ſay, that they have the ſole right of naming the ſum of money, and taxing the people, of their province, to pay that ſum, which they ought to contribute towards the neceſſary expence, incurred for the defence and protection, and government of the whole community, of which they are only a part; I will take upon me to anſwer, That their opinion is neither lawful, conſtitutional, juſt, nor reaſonable. If they have got an act of parliament, by which they are veſted with ſuch a power, let them ſhow it; and then we ſhall be all ſatisfied, that the gentlemen, of the Maſſachuſet's-Bay, are exempt, by that law, from the national rule of taxation: and that they are permitted to live, without paying any taxes at all, towards the national expence; or only juſt as much as they ſhall pleaſe to afford, out of their own bounty.

There is no principle in our conſtitution, neither was it ever the ancient practice (I do not mean the ancient practice of the Maſſachuſet's-Bay) I mean the ancient practice of England for thirteen hundred years paſt, that any part of the community, had a right to tax themſelves, to defray the national expence of government. Let them take it at any point of time they pleaſe, even as far back as the Saxon period before the conqueſt, when the conſtitution was in its perfection; when every ſhire was a diſtinct province, as much as they are now; and a complete government of itſelf, ſo far as to provide for the civil, and military government of the ſhire; which they did in their ſhire-gemots, or ſhire-aſſemblies, amongſt themſelves.

But when any national expence became neceſſary, for the good of the whole, it was abſolutely neceſſary that a power ſhould be lodged ſomewhere, to tax the whole, and not to ſuffer every ſhire to

tax

tax itſelf; and they very wiſely veſted that power, in the hands of a ſelect number of men, who were elected for that purpoſe; and who were to decide upon that point, by a majority of voices, which bound the whole community at once; and this put an end to all conteſt about the matter. Whereas, on the contrary, had the ſhire of York, for inſtance, come to the ſame reſolution THEN, as the province of the Maſſachuſet's-Bay hath NOW, it would have been a direct violation of the conſtitution, and an attempt to diſſolve the community, as far as in them lay; and had they ſucceeded, muſt have brought on the deſtruction of their old mode of government, which we call the conſtitutional law of the land.

However, not to go ſo far back as the Saxon period, we have an example in the city of London, which is a town and county of itſelf, and whoſe government is eſtabliſhed upon the old conſtitutional principle; where the mayor, aldermen, and repreſentative body of men, have a power of taxing the inhabitants, to defray the expence of both the civil, and military government of the city; yet, notwithſtanding this, they are taxed in common, with the reſt of the people, for the national expence of the ſtate.

Our conſtitution hath divided, the country and people, into parts; and ſo far as concerns the internal police of the country, they are independent one of another. But the ſame conſtitution hath united, all theſe parts into one whole; and made them all obedient to the acts, and laws, of one legiſlative authority. There cannot be a greater abſurdity ſuppoſed in government, than to admit two legiſlative authorities in one ſtate, independent of each other. But upon this North American principle, we ſhall not only have two, but we may have fifty-two. For, according to them, in every pro-

vince we are now, or may hereafter, become poſſeſſed of; where we provide for the internal police of the country, upon the Engliſh conſtitutional principles; there we are to eſtabliſh a legiſlative authority, independent of the legiſlative authority of Great Britain. Such a principle as this can in its own nature, produce nothing but diſorder, and ſtrife; is incompatible with the peace of all ſociety, and every principle of our conſtitution, and not to be admitted without their deſtruction.

The predominant principle in our conſtitution, in this reſpect, is to unite many parts, into one whole; but this reverſes our conſtitutional principle, and divides one whole into many parts. Our happy conſtitution cements, and unites the whole together, by an equality of rights, and an equality of expence; which together produce ſtrength, peace, harmony, and order.

Let us now ſee how the people, in our diſtant provinces, are ſituated, with reſpect to the exerciſe of their conſtitutional rights of election, for members to ſerve in parliament. And as this ſeems to be the ground, on which they build their main ſtrength, and from whence they draw all their arguments, I will endeavour to give it a particular attention, and deſcribe how the conſtitution operates, with regard to them.

Let it be remembered, that the government of England is founded upon the common rights of mankind; where the elective power of the people, forms the moſt eſſential part of the legiſlative authority. And let us alſo remember, that the king is in the conſtant exerciſe of his executive power, which is creative of wants, which himſelf cannot ſupply; and therefore, he muſt always have his parliament within his call, that he may procure their advice and aſſiſtance, whenever they are wanted.

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In the king is placed the ſeat of all intelligence, and information, from all quarters of the world, where the Britiſh empire is concerned; by which, he is enabled to know what dangers, and difficulties, obſtruct the welfare, and happineſs of his people in general. Therefore he is the only perſon, that can be able to inform his parliament of the truth, and what means are to be taken to remove theſe obſtructions; and to eſtimate the expence that will attend the ſame.

Were it otherwiſe, no king of England would be able to extend his care, or to execute any plans he may have formed, for the mutual benefit of his people. He could not fit out fleets, and armies at home for the protection of his diſtant provinces, without there were a power at home, which he could depend upon, that is both able, and willing, to ſupport him, in all his juſt meaſures; and provide for the neceſſary expence, at all events. This, of itſelf is ſufficient to ſhew the neceſſity of confining the formation of the legiſlative authority, within the immediate call of the king. And hence it is evident, that the formation of the legiſlative authority, in a ſtate that is founded upon a delegated power like that of England, muſt be in the hands of the people, where the ſeat of government is placed.

At the reſtoration of the conſtitution, in the reign of Henry the third, under the ſanction of our great charter, the power of election was veſted in the inhabitants of certain cities, boroughs, towns, ports, and the freeholders of the reſpective ſhires, or thoſe intereſted in the land: and no man, that did not fall under ſome one of theſe denominations, had any power of election veſted in him. From whence it evidently appears, that no Engliſhman, barely conſidered as ſuch, hath any power of election, for a repreſentative to ſerve in parliament.

Upon this principle it is, that the people of our new great towns, ſuch as Birmingham, Mancheſter, and many others, have no power of election veſted in them; and conſequently have no repreſentatives in parliament, of their own election, at all. And therefore, the people in our diſtant provinces, are preciſely, and literally in the ſame ſituation as the people in theſe great towns, and all the villages, and open country, which contain thouſands, and tens of thouſands of people, in Great Britain, who have no power of election; and conſequently have no repreſentation, in parliament, any more than the Americans. Yet all this multitude of people, who have no power of election, would receive no damage from not being electors, provided there was a competent number of electors in every place of election, ſo as to ſecure a conſtitutionally free, and independent houſe of commons. As long as this is the caſe, it is of no conſequence, who elects them; for every man, that is not an elector, may receive the full benefit of our conſtitutional mode of government, as much as if he were an elector. Yet every Engliſhman, as ſuch, whether he be born on this, or that ſide the Atlantick, hath a right to take up his power of election, whenever he pleaſeth to connect himſelf, with ſome one of thoſe towns, or become a freeholder; ſo as to ſatisfy the cuſtomary mode, by which every other man obtains the power of election.

But if this elective power were conſtitutionally ſo fixed, to the perſon of an Engliſhman, that it muſt travel with him, into any part of the world, where ever he ſhould think proper to ſettle; and that he ſhould have there, the ſame conſtitutional right, as he had in England, to elect repreſentatives, to ſerve in the parliament of Great Britain, which is the point contended for; in that caſe, we ſhould be obliged

obliged to collect our legiſlative authority, from the four quarters of the world, whenever Great Britain ſhall think proper, to eſtabliſh colonies, in Europe, Aſia, Africa, and America.

It is the determined law of election, that every man, who is veſted with the power of election, ſhall exerciſe that power in perſon, upon the ſpot from whence he derives that power, For if I be an houſekeeper, in the city of Weſtminſter, I am an elector for the city of Weſtminſter, ſo long as I continue there. But if I leave the city of Weſtminſter, and never return, I loſe my power of election, and never recover it. Or if I be a liveryman, of the city of London, and retire from London, though the right of election will ſtill remain in my perſon, yet I cannot exerciſe that right, without I return back again to the city of London.

In like manner it is, with every man who leaves his native conntry, and lives in our diſtant provinces; he willingly, and voluntarily relinquiſhes the exerciſe of his elective power, in favour of ſome thing more ſubſtantial; and can never, conſtitutionally, ſo long as he continues there, exerciſe that right, in the election of any member, to ſerve in the parliament of Great Britain. All members, of any ſociety, muſt ſubmit, and fall in with the conſtitutional laws of that ſociety, to which they belong; and not expect that the laws of the conſtitution, are to give way to them. For, upon that principle, a conſtitution would be continually fluctuating, in order to accommodate itſelf to every change of things, that might happen.

It is the conſtitution itſelf (which muſt operate, upon the ſpot, where the ſeat of government is placed,) that refuſes our diſtant provinces to exerciſe their elective rights, for the election of repreſentatives, to ſerve in parliament. For as they have placed themſelves at ſuch a diſtance, they have put it

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out of their own power, to be electors; but, in every other reſpect, they may receive the full benefit of the conſtitution, as much as any man at home. But to ſay that no Engliſhman is to be taxed, without his conſent, either in perſon, or by his repreſentatives, is merely ſound without ſenſe, and not true in fact; but muſt be limited, by the conſtitutional mode of taxation, which only requires, that no Engliſhman ſhall be taxed, without the conſent of a repreſentative body of men, in parliament. Were it otherwiſe, as I have ſaid before, a government founded upon the common rights of mankind, could never advance beyond a certain limited point, or form any advantageous plans by the extention of their territory, for the mutual benefit of the whole community.

The honeſt end, of our American brethren, in propoſing theſe unconſtitutional expedients, ſeems to be to obtain that protection, and ſecurity, which they are conſtitutionally entitled to; and which they are apprehenſive, at their diſtance from the ſeat of government, they will not be able, otherwiſe to procure. And it muſt be confeſſed, in juſtice to them, that we have given them ſome cauſe to doubt our intention, by the partial mode of the ſtamp-act; in which we have attempted, to tax our American brethren, as a ſeparate, and diſtinct people from ourſelves; which, without doubt, would deprive them of that perfect ſecurity, and confidence in government, which our conſtitution ſo amply affords. And therefore, it is no wonder, that they are looking out for ſome other expedient, by which they may obtain that ſecurity, which we have ſo notoriouſly attempted to deſtroy.

Nothing will contribute ſo much to the peace, harmony, and order of our diſtant provinces, as a thorough conviction, in their own minds, that they are perfectly ſecure in the enjoyment of all their

their conſtitutional rights; and that no partial laws may affect their property, by which they can be charged more, for the expence of government, than what in juſtice, and equity they ought to pay. But this confidence can never be had, from the dependence on the adminiſtration, of any ſet of men whatever. No, it muſt be obtained upon the true and fixed principles of the conſtitution itſelf; and thoſe alone.

The ground of all ſecurity, for every man's perſon, and property, both at home and abroad, is a thorough reformation of the conſtitution in all its parts; and that it be eſtabliſhed, upon a foundation never to be ſhaken, by any acting parties in the ſtate. And this is the firſt thing, that our diſtant provinces ſhould endeavour, by every legal method in their power, to have done. And they have the more reaſon to expect this to be done, becauſe many innovations have taken place during their abſence; or, in other words, ſince the firſt eſtabliſhment of the colonies. Without it, they do nothing; all other expedients will prove falſe, deluſive, and of no effect. If this be once done, our conſtitution then affords a mode of taxation, which would effectually put it out of the power, of our diſtant provinces, juſtly to complain: And would at all times ſecure, and protect them from paying more, than their equitable ſhare, of the national expence, neceſſarily incurred for the defence, and protection, of the whole community conſidered together; which is all our brethren, in the diſtant provinces, can honeſtly deſire; and as much as Great Britain has to demand. This I will endeavour to explain in the manner following:

When I conſider Great Britain, as divided into ſeparate counties, or ſhires, which are all independent one upon another; I conſider her as divided into ſo many parts, of one whole. But when I

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conſider her, in her legiſlative capacity; I conſider all theſe parts as united into one whole. In like manner, I would politically, conſider the whole Britiſh Empire, which is compoſed of many parts, as united into one whole; let the geographical diſtance, be what it will. This being properly underſtood, and conſtantly adhered to, will afford a ground for that conſtitutional ſecurity, I have before aſſerted. Upon this principle, let all our taxation laws, become general laws, and affect every part of the community alike; ſo that no tax may be paid, by our diſtant provinces, but what we ſhall be obliged to pay in the ſame manner, and proportion, at home.

By this equitable rule, no man, in the Britiſh Empire, can apprehend any injury, from any partial diſtribution of taxes; and every man, let providence have placed him where, and in what condition ſoever ſhe may, will have the ſatisfaction to know, that he pays no more than every other man, in the like circumſtances, at home. When the houſe of commons, firſt entertained the intention of taxing, our diſtant provinces, by a ſtamp-duty, they ought firſt to have repealed our ſtamp-act, and then to have made a new one; which ſhould have extended over all our diſtant provinces. In that caſe, the ſtamp-act would have been eſtabliſhed, upon the true conſtitutional ground, and mode of taxation; by being an equal tax, and affecting the whole community alike.

Upon this ſolid foundation, our diſtant provinces muſt have the ſame benefit, of our elective power, as we have ourſelves; for we cannot take care of our own intereſt, without taking the ſame care of theirs. Neither can we hurt them, without hurting ourſelves; our intereſts, and welfare being mutual. And this is the conſtitutional ſecurity that every man in England, receives, at preſent who is not

not an elector. And it is the ſame ſecurity, to our diſtant provinces, as if they were actually repreſented, by members of their own election. For even ſuppoſing they had, a majority of members, in our houſe of commons, what could they do more for themſelves than this? They could not, with any honeſt face, tax poor old England at more than they would tax themſelves.

This mode of taxation is ſo obviouſly practicable, that little needs be ſaid about it; becauſe an act of parliament, ſo conſtituted, will evidently operate the ſame in Boſton, or Jamaica, as it will in Yorkſhire. Let us enlarge upon this point, a little: The poor man, who earns his bread for his family by the labour of his hands, ſhould never be taxed, by taxing the neceſſaries of life in ſingle articles. All taxes in a ſtate, ought to be paid by the property in the ſtate; and this property is of two kinds, it is either fixed, or moveable. The fixed property, I call all lands, and houſes; and the moveable property, money, and merchandize; or any other thing that is moveable, from place to place. And if all the neceſſary expence, of our government, were proportionably divided between theſe two kinds of property, in the whole Britiſh empire; it would be very little felt by any individual.

Since the revolution, we have increaſed our expence, by maintaining an army of ſoldiers; an army of exciſe-officers; an army of cuſtom-houſe officers; an army of ſtamp-officers; an army of licence-officers; and an army of uſeleſs placemen, penſioners, and contractors; all which, annual parliaments would ſoon reduce, within their due bounds. Four of theſe are principally employed in collecting the taxes, upon the moveable property; and the neceſſaries of life; of which perhaps,

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above one half is conſumed by this mode of collection.

There are two taxes, that are ſtill collected upon the old mode; which we may conſider as ſubſtitutes to the impoſts, formerly granted, by parliament, called ſubſidies, tenths, and fifteenths; which were taxes generally granted upon the fixed, and moveable property, and collected by the officers of the pariſh: which were collected without expence, and came neat, and clean, into the exchequer. Such now is the tax upon land, and the tax upon houſes and windows; which are both collected with little or no expence, and are taxes upon the fixed and moveable property.

All taxes that are payable by the tenant, whether they be rated upon the houſe, or the number of windows, are only different modes of taxing the moveable property of the inhabitant of that houſe; which operate in proportion to the circumſtances a man appears to live in: as a man, of great property, is ſuppoſed to live in a great houſe, and a man, of ſmall property, in a ſmall houſe; and hence the tax, upon the inhabitant, will be accordingly. And, therefore, if two taxes, one payable by the tenant, and the other by the landlord, and both rated upon the rents of all houſes, and land, and divided in proportion to the value that the moveable property bears, to the value of the land, then theſe taxes would be upon a juſt, and equal foundation; and would be the beſt rule that could be adopted, to raiſe the neceſſary ſupplies of the ſtate. But the misfortune is, that, as it now ſtands, our governors being all rich in land, reduce the land-tax, and raiſe the tax upon windows; by which means they relieve themſelves, and throw the burden upon the moveable property, in the hands of the tenant.

In order to remedy this evil, let a calculation be made, as near as a thing of that nature will admit of, what proportion the moveable property bears, to the value of the land; and let the tax, payable by the tenant, be laid upon the rent of the houſe, and not upon the windows. And let this tax be in ſome proportion to, and always regulated by, the land-tax; which would effectually prevent one kind of property, from tyrannizing over the other. For inſtance, we will ſuppoſe the moveable property, to be one third of the value of the land. So that ſuppoſe an eſtate in land, calculated upon this principle, which will rent at one hundred pounds per annum, to be worth three thouſand pounds, and the ſtock, upon that farm, to be worth one thouſand, then the moveable property. will be one third of the value of the land.

The ſame rule will hold good, in reſpect to our great towns, where the rents of the houſes, taken upon an average, will be an equitable rule, for taxing the moveable property in the towns. This will appear evident when we conſider, that our great merchants, and traders, muſt truſt out their property into the hands of the poorer ſort of retailers, which have little property belonging to them; ſo that the rich man's property will be taxed, in the hands of the poorer ſort of retailers, by the extraordinary rents they are obliged to pay, in great towns, for the convenience of carrying on their buſineſs. From whence it appears, to me at leaſt, that if we make an average of the rents of the houſes of the towns, and the moveable property in the towns, we ſhall find them to pay a greater ſhare of taxes, than the moveable property upon the land, in the hands of the farmers or occupiers of the land.

Upon this principle, when the landlord is taxed at one ſhilling in the pound, for his land, the tenant will pay four pence, in the pound upon his rent,

rent, in conſideration for his moveable property. Thus the tax, upon the landed and fixed property, would become a ground, or rule, for taxing the moveable property; and they would riſe, and fall with each other, in proportion to the neceſſity of the ſtate. Hence it will follow, that the rental of all houſes and lands, may ſerve as an equitable rule for taxing both the fixed and moveable property, throughout the whole Britiſh Empire.

Where taxes are put upon the real value of the rents of the houſes and land, they cannot be partial, in any part of the world, where the coin is reducible to the ſame ſtandard with England. And upon the plan here propoſed, the mode of taxation will be eaſy, and intelligible to every one. And it will remove an objection, made by our American brethren; that our parliament would want the neceſſary information, to tax our diſtant provinces. But, upon this mode of taxation, the parliament can want no information from our diſtant provinces, to know that a gentleman in America, poſſeſſed of an eſtate of one hundred pounds a year, is as capable of paying a land tax, for that eſtate, as any gentleman of the ſame eſtate in England. And that any inhabitant of the towns in America, is as able to pay a tax in proportion to the rent of his houſe, as any man in England. And what will recommend this mode of taxation the more, will be, that it can be collected, without expence by the pariſh officers, in every department in the ſtate.

Thus I have endeavoured to ſhow the dangerous conſequence, to the community in general, even to the utter ſubverſion of every principle and practice of the conſtitution, to ſuffer our diſtant provinces, to tax themſelves, in their provincial aſſemblies; or to admit them to ſend new members into

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to parliament from thence. And, at the ſame time, have pointed out the mode of taxing our diſtant provinces, upon ſuch conſtitutional ground, as affords as ample a ſecurity to them, as it does to the people at home: which is all, the moſt ſcrupulous men, in reaſon and juſtice can deſire; and which, I hope, will give ſatisfaction to every peaceable and honeſt mind, in the whole Britiſh empire.

Having thus gone through what I intended, I ſhall conclude the whole, by offering a political reflection or two, to the conſideration of the ſober, and thinking part of our American brethren; founded upon their ſituation, with reſpect to Europe in general. Becauſe there are ſome hot headed fooliſh men, to ſay no worſe of them, in America, that would inflame the minds of the people, by repreſenting them as in a ſtate of bondage, and ſtimulating them to what they call flinging off the yoke, and gaining an independency.

Great Britain hath, conſtitutionally, no yoke for the neck of her enemies, much leſs for her own ſons; who are all men of the ſame community, without any diſtinction. She only deſires her diſtant provinces, to contribute their proportionable ſhare to the expence of the ſtate, in common with the reſt of their brethren at home. If this be a yoke, it is an equitable yoke, by which all ſocieties of men are linked together; and no ſociety can ſubſiſt without it, ſo long as one nation will invade the rights, and properties of another; or the name of conqueror, is known upon the earth.

However, let us indulge theſe independent gentlemen, and for a moment, ſuppoſe they had gained this independency; and that Great Britain had withdrawn her protection from them. The conſequence would be, that they muſt fight their battles ſingle handed, which would bring upon them ſuch a

yoke, as neither they, nor their children would be able to bear; and reduce the people, in America, to the moſt miſerable condition of all men. They muſt then be at the whole expence of both forming, and maintaining an army, and navy, for their own defence; and not only in proportion to their own ſtrength, but in proportion to the ſtrength of their moſt potent enemies; and they would find this expence, a much more gauling yoke than clubbing their mite, with the people of England.

If the people, in our American provinces be ſo very ſhort ſighted, as only to look round them in America, they will indeed find no body of men there, that will be able to moleſt them. But their enemies will come, from another quarter. They will be all European enemies, of the greateſt maritime ſtrength of any nation in the world; except Great Britain. It is againſt theſe they muſt proportion their defenſive powers, to have any effect; which is impoſſible for them to accompliſh. For all their great towns are ſituated either directly upon the ſea-coaſt, or upon ſome large navigable river, approachable by ſhips of ſtrength; and conſequently they muſt ſoon be reduced to two alternatives, either to ſubmit to the firſt invader, or ſuffer their town to be levelled with the ground, and buried under their own aſhes. By which means, the inhabitants would be obliged either to retire backwards into the woods, and live with the ſavage inhabitants, or quit the country; if they ſhould be ſo happy as to eſcape the hands of the enemy. For whoever is maſter of the coaſt, will be maſter of the inland-country, in ſpight of all oppoſition.

Thus America, if left to herſelf, would either fall under ſome great power, that was able to conquer the whole coaſt; or ſhe would be divided amongſt the ſeveral maritime ſtates of Europe, which would be

be perpetually contending for the ſuperiority, and propagate continual war in the country: and thus ſhould we ſee at once, an end of all their boaſted independency.

Upon the preſent ſyſtem of politicks, in Europe, Great Britain is ſo neceſſary to America, that they cannot ſubſiſt one moment without her. And if they were to conſider her only as an out-fort, or garriſon, upon the borders of their European enemies, America would find it abſolutely neceſſary, for her own defence, to ſupport the power and independency of Great Britain, againſt all her enemies: for whenever ſhe was conquered, America would fall to the conqueror.

It is a peculiar bleſſing of heaven, upon our diſtant provinces, that they are connected with Great Britain; which is a ſtate of the greateſt maritime ſtrength in the world, and which hath always ſheltered them, under the ſhadow of her wings: Whoſe government is founded upon the common rights of mankind; and whoſe people, at home, are as anxious for the rights, liberties, and privileges of their brethren, in America, as they can be themſelves.

Upon this united foundation, they muſt continue till ſome general misfortune overwhelm all Europe, in one common calamity; by which, the ſeveral powers will be ſo engaged, in their own defence at home, as to neglect all attention to their diſtant provinces. And then indeed, in all probability, North America will riſe miſtreſs of that part of the world; but the inhabitants will not be ſo happy then, as they may be now, if we conſider a comfortable, commodious, and ſecure way of living, as the happy ſtate of man; which is, undoubtedly, the true end of all ſociety.

To continue this happy ſtate to themſelves, they need only to fix their eyes upon the firſt principle of

of the conſtitution, which is, THE ANNUAL EXERCISE OF THE ELECTIVE POWER OF THE PEOPLE; and unite with their brethren in England, to reſtore, and maintain it, upon its genuine foundation, ſo that it may operate freely, and never hereafter be reſtrained, or ſubverted, EITHER BY THE PREROGATIVE OF THE CROWN, OR BY ACTS OF PARLIAMENT.

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